REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2014 – 01171

BETWEEN

JOY THOM

Claimant

AND

DERECK THOM

First Defendant

JANELLE HORSFORD

Second Defendant

ALICIA THOM

Third Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr. Saeed Trotter instructed by Mr. Farid Scoon for the Claimant

Mr. Reynold Waldropt and Mr. Jeron Joseph instructed by Adaphia Trancoso for the First & Second Defendants

The Third Defendant was unrepresented

JUDGMENT

I. INTRODUCTION

[1] This decision concerns a claim for possession of residential property situate at No. 67 Waterloo Road, Arouca which comprises of a plot of land measuring approximately eight thousand square feet (hereinafter referred to as "the property in contention"). It is a matter among family members whereby the claimant is the mother of the first and third defendants and the second defendant is the girlfriend of near fourteen years of the first defendant. All parties to this claim presently reside at the property in contention and the claimant seeks to have the first and second defendants (being the claimant's son and his girlfriend) removed from possession of the property in contention. No relief was sought by the claimant against the third defendant who, according to the claimant, was only added consequent to the requirement under the **Civil Proceedings Rules 1998 (as amended) ("the CPR")**, that all persons who live on the premises of which a claimant seeks possession are to be joined in the claim for possession, if not as a claimant, then as a defendant.

[2] The procedural sequence of events in the instant matter was as follows. On 4 April 2014 the claimant initiated the instant claim for possession by fixed date claim form supported by her affidavit. By her claim, the claimant sought against the first and second defendants *only*, the following relief from the court:

(i) Possession of the property in contention;

(ii) Costs;

(iii) Interest pursuant to section 25 of the Supreme Court of Judicature Act; and

(iv) Such further and/or other relief as the Court deems fit.

[3] The matter first came up for hearing on 15 April 2015 and directions were given by the court in respect of the filing of response affidavits by the first and second defendants, full disclosure and inspection as well as the filing of the witness statements for both parties.

[4] It followed that on 29 April 2014 both the first and second defendants filed an affidavit in reply to the claimant's affidavit in support of her claim. Additionally, on 16

May 2014, both the claimant and the first and second defendants filed their list of documents.

[5] Thereafter, on 22 May 2014 the attorney-at-law for the first and second defendants filed ten witness statements, namely the witness statements of: (i) Shelly-Ann Thom; (ii) Darryl Thom; (iii) Sharlene Hooper; (iv) Terrance Sheppard; (v) Carol Thom; (vi) Lyndon Pierre; (vii) Brian Collymore; (viii) Dane Smith; (ix) the second defendant; and (x) the first defendant.

[6] That was followed, on 26 May 2014, by the filing of five witness statements on behalf of the claimant, namely the witness statements of: (i) Cecil Thom; (ii) Nicole Ballantyne; (iii) Betty Smith; (iv) the third defendant; and (v) the claimant.

[7] A second hearing of the matter took place on 4 June 2014. At that hearing the attorneys-at-law for both parties waived the criteria for the establishment of a proper foundation for determining the admissibility of video footage evidence and thus three compact discs containing video footage evidence remained as exhibits to the respective witness statements filed for the first and third defendants. At the second hearing, permission was also granted to the claimant to: (1) withdraw the witness statement of Betty Smith filed 26 May 2014; (2) expunge same from the record; and then (3) re-file and serve a fresh witness statement of Betty Smith. It followed that on 6 June 2014, a fresh witness statement of Betty Smith was filed on behalf of the claimant.

[8] On 16 June 2014 the attorneys-at-law for the claimant filed their notice of evidential objections and on 18 June 2014 attorneys-at-law for the defendant filed their evidential objections. As a matter of expediency, it was agreed by counsel for both parties and the court that those evidential objections would be dealt with and determined as they arose in the course of the trial.

[9] On 7 July 2014, an agreed statement of facts and issues together with a proposition of law and authorities was filed by counsel for the claimant as well as counsel for the first and second defendants, respectively.

[10] The matter proceeded to trial on 15 July 2014 and lasted four days, there being additional hearings on 23 July 2014, 29 September 2014 and 9 October 2014. Thereafter, the claimant and the defendant both filed their respective closing submissions on 5 December 2014.

[11] I feel compelled to note that the evidence which was put before the court by parties to this matter was quite voluminous although the issues of law for which this court has been engaged to resolve were in fact capable of being quite straightforward. The volume of evidence which was put before this court included quite a lot of hearsay consented to by counsel on both sides, video evidence entered as evidence by consent consequent to both counsel waiving the need to set a proper foundation, and some evidence which was dealt with in detail but which was not relevant to the instant claim and which could have therefore been avoided for the purpose of this claim.

[12] In those premises I think it is worth reminding counsel for the respective parties of their duty both to the court as well as in the best interests of their clients to diligently and with a keen eye sift through the instructions of their clients in order to ascertain what information is truly relevant in respect of either supporting a claim or defending it. It is understandable that when a client comes to an attorney with information the client is often uncertain of the exact details that may be important to his/her claim or defence but he/she entrusts the trained attorney-at-law to assess what will indeed be relevant. When claims are supported or defended strictly utilising information which is relevant, then the court gains greater proximity to obtaining the overriding objective of the Civil Proceedings Rules which aims to deal with cases justly which objective in itself incorporates the fundamental underlying philosophical principles of equality, economy, proportionality and timeliness[1]. Part 1.3 stipulates that the parties (which term includes the attorneys-at-law) are required to help the court to further the overriding objective.

[13] Nonetheless, upon consideration of all the evidence in this instant matter, I have found that the claimant has succeeded in establishing that a bare licence to occupy the property in contention was granted to the first and second defendants and such a licence

[1] CPR 1998 Part 1.1

was capable of being properly revoked by the claimant at anytime. The court is not satisfied that the elements of proprietary estoppel existed in the instant matter so as to make it unconscionable for the claimant to now revoke the licence which she granted to the first and second defendants to occupy the property in contention. The court is of the opinion that this is a case whereby the claimant in her affection as mother of the first defendant extended the occupation of her property to the first defendant so as to assist him in troubled time. Unfortunately, much anguish has come from the living situation consequent to the grant of that licence.

[14] The court acknowledges that the first defendant would have expended money in purchasing materials for the construction of an incomplete structure upon the property in contention. That incomplete structure, having not been professionally or properly built, has been long demolished save the foundation and renovated by the third defendant. However, more importantly, the court has concluded that the amount spent by the first defendant in building that incomplete structure himself was incapable of exceeding or is in no way close to the amount that the first and second defendants would have paid for rental accommodation had they not been permitted by the claimant to reside rent-free at her property since 2012.

[15] Thus, the court is of the view that no inequity exists as against the first and second defendants and an irrevocable licence was *not* created. Therefore the claimant may rightfully revoke the licence which she granted to the first and second defendants. In those premises, the court orders that the claimant is entitled to vacant possession of the property in contention as against the first and second defendants.

[16] It is indeed unfortunate that this matter could not have been resolved without intervention by the court but it is hoped that this would bring some resolution to the parties who all share a familial bond. In light of the tensions which have been previously existent in the household, the parties are encouraged to respect the order of the court and in their own interests to refrain from tormenting, harassing, threatening or dealing with each other in any negative-like manner, so as to bring closure to this matter.

[17] The reasons for my decision have hereinafter been canvassed in greater detail.

II. FACTUAL BACKGROUND

(a) Historical Ownership of Property

[18] At the time of the claim, the property in contention was occupied by the claimant, all three defendants and the third defendant's daughter, Arielle Thom. Importantly, from the outset the second defendant admitted that she may not have an equitable interest in the property but stated that she and the first defendant have been in a common law relationship for several years and as such wherever the first defendant lived she would follow.

[19] It is clear from the unchallenged documentary evidence in the form of the Royal Grant of Crown Lands Volume 105 Folio 13 and Certificate of Title Volume 1563 Folio 253 that the property in contention was originally Crown Lands and a Royal Grant was given to Christopher Mc Clean in 1903. Christopher Mc Clean was married to Albertina Bishop also called Priscilla Bishop and they had four children, namely, (i) Ida Yearwood; (ii) Melvina Lawrence; (iii) Eldeca Burroughs; and (iv) Henrietta Mc Clean. Those four children were amiably referred to by the claimant as "the minors" and thus the property in contention commonly referred to as "minors' property". By virtue of Memorandum of Transfer dated 4 March 1907 by Christopher Mc Clean, Albertina Bishop became seized and possessed of the property in contention. Subsequently, by Memorandum of Assent dated 14 September 1959, the four children of Albertina Bishop became possessed of the property as joint tenants.

[20] From the evidence it appears to be agreed by the parties and their respective witnesses that although the property was owned by the four children of Albertina Bishop, the only of the four children who occupied the property was Eldeca Burroughs who was the grandmother of the claimant. Eldeca Burroughs and her husband, Theophilus Burroughs occupied the property in contention.

[21] It followed that even after Eldeca Burroughs died, Henrietta Mc Clean who was the last surviving joint tenant and therefore the paper owner of the property in contention, still did not occupy same. Rather, the property was occupied by one of Eldeca's children and his wife, namely, Gladys and Theophilus Burroughs, who were the parents of the claimant. It happened that even after Henrietta Mc Clean died, the property was retained by the claimant's parents and their children. That is despite the fact that Henrietta Mc Clean willed her legal interest in the property to her son, David Smith and adopted daughter, Judith Williams. But it would appear that neither of the children of Henrietta Mc Clean ever sought possession of the property in contention.

[22] The clear evidence is that even after Gladys and Theophilus Burroughs died, the claimant retained possession of the property in contention. It was the unchallenged evidence that the claimant lived at the property in contention for almost her entire life. The claimant grew up on the property with her parents together with her brothers, Calvin and Fitzgerald, and her sisters Verna, Irma and Irmin. When the claimant was about twenty years of age her mother Gladys put her out of the house because she chose to get married to her husband, Cecil Thom. As a consequence, the claimant lived at an alternative residence to that of the property in contention for some eight years, during which she had her three children, namely, the first and third defendants and Darryl Thom. Then when she was twenty-eight years of age or thereabouts the claimant returned to the property in contention, where she has resided from thence to present. The claimant is now about seventy-one years of age and thus it appears that since her return to the property in contention at the age of twenty-eight or thereabout, she would have been in undisturbed possession of the property in contention for nearly 43 years.

[23] At the time that the claimant returned to the property in contention, her parents had a wooden house on the land and the claimant built her house in front of that wooden house. The claimant's parents are now both deceased. Among the claimant's aforementioned siblings, Fitzgerald has died and it is the claimant's unchallenged evidence that the remaining four siblings have long vacated the property more than forty years ago, abandoning all rights to same and leaving the claimant as occupant.

[24] Further, it would appear from the statement of Ms. Betty Smith (the daughter of David Smith), that although the property in contention was willed by Henrietta Mc Clean to David Smith and Judy Williams, neither of those persons has ever lived on the property. Ms. Betty Smith acknowledged the title of the claimant as beneficial owner to the property in contention and additionally stated that the claimant is recognised by everyone as the true beneficial owner. To that Ms. Betty Smith added that she had not known of any other family members superseding the claimant's authority and control over the property in contention.

[25] Thus, the present situation is such that the claimant, first defendant and second defendant reside in the concrete structure which the claimant built and developed over the years since her return to the house when she was twenty-eight years of age of thereabouts. The third defendant and her daughter live in a structure which is connected to the structure that the claimant built. The understanding is that the structure in which the third defendant and her daughter reside used to be a wooden structure in which the claimant's parents lived but that wooden structure was at some point demolished and developed into a concrete structure connected to the claimant's home so as to create one dwelling house divided into two sections.

(b) <u>First Defendant's Licence to Stay on Property</u>

[26] The crux of this matter is premised in the circumstances in which the first and second defendant came to be presently in possession of the property in contention. It is agreed by all the parties to the instant claim that the first and second defendants came into possession of the property in or around December 2012/January 2013. It is also agreed that the claimant did give the first and second defendants permission to reside in a bedroom of the claimant's property. However, there is conflicting evidence in respect of the basis upon which the claimant decided to give the first and second defendants such permission, and in this particular case in which the first and second defendants have raised the defence of proprietary estoppels, the basis is of uppermost importance.

[27] It was the claimant's case that she gave the first and second defendants permission to occupy the property in contention at the request of the first defendant who according to her told her that he could no longer afford to live on his own as he was having difficulty obtaining a good paying job because of his criminal record. The claimant further stated that the arrangement was that she would allow the first and second defendants to live and occupy her bedroom while she would use the smaller bedroom and that all three of them would share the same bathroom and toilet facilities.

[28] However, the first and second defendants' recollection of events was quite different. According to the first defendant, approximately three to five years prior to 2012, the claimant and the third defendant were constantly fighting. As a result, several court matters ensued between both the claimant and the third defendant. In support of that fact the first defendant exhibited a protection order sought at the Magistrates' Court by the claimant against the third defendant in December 2012. The first defendant further maintained that as a result of the consistent confrontations between the claimant and the third defendant, the claimant turned to him (the first defendant) for help and the first defendant would often act as a mediator between the claimant and the third defendant.

[29] The first defendant stated that it followed that in or around October/November 2012, the electricity was disconnected at the property in contention and the first defendant invited the claimant to stay with him and the second defendant for three days at the first defendant's rented apartment at Madras Road, St. Helena. The case of the first and second defendants is that during those three days that the claimant resided with them, the claimant persuaded the second defendant to convince the first defendant to return home to the property in contention to ensure peace due to the conflict between the claimant and the third defendant. According to the first and second defendants, the first defendant was at first hesitant as he was afraid that the claimant would soon have an issue with the second defendant, as according to them the claimant was commonly in the habit of finding issue with any person who was a girlfriend of the first defendant. Despite his alleged hesitations he stated that he decided to move into the home so as to ensure the claimant's safety.

[30] It was the evidence of the first defendant that he and the second defendant gave up their rented apartment and moved into a bedroom in the claimant's house at the property in contention. The first defendant deposed that when he returned to the property in contention, it angered the third defendant causing further contentions to ensue among all those who were now residing at the property in contention. He also maintained that he decided to move into the property in contention as his mother had promised him that if he did so, he would eventually inherit her share of the property in contention.

[31] In support of the first defendant, the claimant's eldest son and the brother of the first defendant, Darryl Thom, in his witness statement deposed that in or around 2012, his mother contacted him stating that he (Darryl Thom) was "fairing well" in Toco, that the third defendant lived in the back of the property in contention and that her last child, the first defendant, was renting so she wanted him (the first defendant) to come home to the property in contention so that in the event she dies the first defendant would inherit her home. Darryl Thom further stated that he was aware that his mother made a Will in that regard as well. According to Darryl Thom, subsequently, several conflicts ensued between the third defendant and the claimant. The claimant had contacted him stating that the third defendant installed a gate depriving the claimant from access to her part of the property in contention and asking him for assistance. It followed that at the claimant's request Darryl Thom unhinged the gate and moved it so that the claimant could pass.

[32] Darryl Thom stated that when he did that, the third defendant contacted the police and informed them that she was the owner of the property which caused him to be arrested. He stated that the claimant had to intervene in order for him to be released from custody. Darryl Thom maintained that he knew that the first defendant and himself had made numerous attempts to quell the conflicts between the claimant and third defendant but was unsuccessful. He further stated that he believed his mother suffered from memory problems and gave examples of unrelated personal experiences which caused him to believe so.

[33] In response to the case of the first and second defendants, the claimant admitted in her affidavit in reply that she indeed had a conflicting relationship with the third

defendant. However, she was adamant that she never asked for the first defendant's help in resolving the issues she had with the third defendant. Further she did not deny that she spent three days at the first and second defendant's apartment. However, she stated that she did not request the first defendant to come back to the property in contention to live with her. The claimant stated that as a matter of fact, even before she spent three days at his rented apartment, the first defendant had already requested to come back to the property in contention because he had difficulty paying rent. She stated that he would spend time at the property in contention during the day on his computer and she was convinced that he was unemployed and could not afford to live on his own.

[34] She admitted that she did permit the first defendant to occupy her room at the property in contention but only because as a mother seeing her child renting and not working she felt the need to assist him. This came out clearly in cross-examination of the claimant at pages 35 to 40 of the Notes of Evidence dated 23 July 2014:

".....(at page 35 of Notes of Evidence dated 23 July 2014)

Mr. Waldropt:	*Yes. Let me put it this way in December 2012 you told Dereck and his wife common law wife to return to to give up to give up his apartment at Las Lomas and to return to no 67 Waterloo Road, Arouca, that's your....*
Ms.Thom:	*Now I could answer you there. Dereck ain't working.*
Mr. Waldropt:	*Yes or no?*
Ms. Thom:	*You say I have to answer you there, he was not working and as a mother....*
Court:	*First of all remember the discipline of it.* ***First of all, is he correct? Did you ask Dereck, first of all, to give up his rental apartment in Las Lomas?***
Ms. Thom:	***Yes yes.***
Court:	***And the next part of the question is, did you ask him to come to live at number 67?***
Ms. Thom:	***67 Waterloo Road, Arouca****.*
Court:	*Yes.*
Ms. Thom:	***Yes.***
Court:	*Alright from there you can take it.*
Mr. Waldropt:	*And he did so?*
Ms. Thom:	*Yes.*
Mr. Waldropt:	***Yes. Now he was there at your home at your invitation?***
Ms. Thom:	***Yes as a mother at the time thing wasn't bad*** *yet.*
Mr. Waldropt:	*And he was acting on your representation that you make?*
Ms. Thom:	*Well I yes I call him home so yes.*
Mr. Waldropt:	*Thank you. And this was in December 2012?*

Ms. Thom: *Yes. Where are you reading can I?*

.....(at page 18 of Notes of Evidence)
Mr. Waldropt: *And the Will that you made was in October 2012?*
Ms. Thom: *Make a Will. Well I made a Will yes.*
Mr. Waldropt: *Yes in 2012? So you will...in October of 2012, in October of 2012.*
Ms. Thom: *Made a Will in 2012, yes. 2012?*

.....(at page 18 of Notes of Evidence)
Mr. Waldropt: *And then you invite him to come to live with you in December of 2012?*
Ms. Thom: *You know why I did that, a day he call me on the phone.....*
Mr. Waldropt: *I didn't ask you why you did that, just answer. And then you invite him to come and live in December of 2012?* ***In other words he was acting on your invitation and led to believe that the house is his?***
Ms. Thom: ***No. Not at all. Not at all, his behaviour was very bad.***
Mr. Waldropt: *That you do?*
Ms. Thom: *No I am saying not at all. Not at all.*
Mr. Waldropt: *I put that to you...*
Ms. Thom: *He was seeing trouble....he was seeing trouble....*
Mr. Waldropt: *I put that to you....*
Ms. Thom: ***He was seeing trouble and all mother don't like to see their children...and when he came it was a different story. He was seeing trouble but when he came was a horse of a different colour***.

.....(at page 18 of Notes of Evidence)
Mr. Waldropt: ***From since he Dereck has been there at your*** *invitation.....*
Ms. Thom: *Yes that is meh son, yes.*
Mr. Waldropt: ***....in 2012 he has done he has modified the property?***
Ms. Thom: ***No no no***.

.....(at page 18 of Notes of Evidence)
Mr. Waldropt: ***He has also done plumbing and also built cupboards?***
Ms. Thom: ***My place already had plumbing, he the toilets the toilets fix the toilet spoil and if you living in a place and you using the toilet he fix it, that is about all.***
.....(at page 18 of Notes of Evidence)
Mr. Waldropt: *He did those things madam did those things to your knowledge, isn't it so?*
Ms. Thom: *Listen to me you see you asking me a question I don't want to be rude.*
Mr. Waldropt: *I put it to you...*

Ms. Thom:	***Oh gosh I don't want to be rude to the court hear this. When he came the toilet was perfect was working good if he come both of them did spoil, you just normally using a toilet, you fix it because you living free, you ah paying no....***
Mr. Waldropt:	*You will agree with me...*
Ms. Thom:	*You ah paying no rent.*
Mr. Waldropt:	*...that he did the plumbing. He fixed the toilet.*
Ms. Thom:	***We didn't need no plumbing I have a plumber. He fix what he spoil. When he came the toilet was working but they spoiled it and he fixed it. That was no plumbing work he fixed what he spoilt. The toilet was always there when two a them come, they fix the thing****."*

(c) <u>Construction Done by First Defendant on Property</u>

[35] Moreover, the first defendant alleged that in addition to relying on the licence granted to him by the claimant to occupy the property in contention, he had also done substantial construction at the property in contention from which he believed he had derived an equitable interest.

[36] The first defendant explained that when he was just about sixteen years of age, he was arrested for robbery and the charge was dismissed. He stated that as a result of that incident the claimant wanted him under her full supervision and therefore he resided at the property in contention. He stated that while residing at the claimant's home, he also took in a girlfriend, Sharlene Hooper, who stayed with him at a bedroom of the claimant's house. Sharlene Hooper thereafter became pregnant with the first daughter of the first defendant. It followed that contentions ensued between the third defendant and Sharlene Hooper which eventually resulted in the first defendant together with Sharlene Hooper, moving out of the property in contention.

[37] According to the first defendant, when his first daughter, Akilah Aisha Thom, was born to him and Sharlene Hooper on June 18 1996, the claimant told him that he should find somewhere proper to house his child and he alleged that the claimant further told him that he could have built on the spot in the property in contention where the wooden structure was. It followed that whilst the first defendant continued to rent elsewhere together with Sharlene Hooper, the first defendant began construction of a concrete

foundation on the back portion of the property in contention where the wooden structure previously stood. The first defendant's version of facts to this point was corroborated by his then girlfriend, Sharlene Hooper, who stated in her witness statement that in or around 1994, she was in a relationship with the first defendant and they both occupied the back bedroom of the claimant's house at the property in contention. She stated that she renovated the room by installing burglar proof doors and windows.

[38] Moreover, she stated that when she and the first defendant moved out and were renting, during that time the first defendant began building the foundation of his home at the property in contention as he was expecting their first daughter and the claimant told him that he could use the vacant spot and build so that his child and Sharlene could have somewhere to live. Sharlene stated that unfortunately, she broke up with the first defendant before the home was completed but she was aware that the first defendant and his new wife, Shelly-Ann Thom, continued working on the structure which they later moved into.

[39] The evidence is that after his relationship with Sharlene ended, the first defendant got involved in a second relationship with the aforementioned Shelly-ann whom he married. By that time, it appears that the defendant was able to construct just enough of the house so as to enable him and Shelly-ann to be accommodated in the concrete structure. The evidence of Shelly-ann Thom in her witness statement was that she had met the first defendant in or around 1997 and got romantically involved. She stated that at the time the first defendant was in the process of constructing his home at the property in contention. She said she was present and assisted the workers in the construction of same. She stated that she would cook for the workers; ensure they had water and assisted in carrying blocks. Even at night she would hold a candle so they could see to conduct the work. She maintained that the partially covered concrete structure which the first defendant built was adequate enough to live in and therefore she and the first defendant did move into and resided in the structure.

[40] A number of the witnesses in the instant claim, deposed to a description of the incomplete concrete structure which had been built on the property in contention by the

first defendant in or around the year 1997 but the most comprehensive description of the structure came from the cross-examination of the claimant's eldest son, Darryl Thom, who frequented the property in contention at the material time and who had sometimes stayed overnight with the first defendant at the incomplete structure. In cross-examination, Darryl Thom described the incomplete structure as follows[2]:

"…….(at page 16 of the Notes of Evidence dated 9 October 2014)

Mr. D. Thom**: Yes **I could remember he [the first defendant] was working at Abel at the time and it was Randy, Terry a fella they call Pappy, a few of them, like none of them didn't know what they was doing at that time eh because they I use to laugh sometime when I come home [to the property in contention] I see them in the night with flambeau and all kinda thing laying blocks so the walls and dem was very crooked and crooked and the lintels was…

Mr. Trotter: Right right so you saw the house when it was completed?

*Mr. D. Thom: Well **it was not completed in that it wasn't plastered or anything but it had walls and after a while he put up some galvanize to the top, I wouldn't call it a roof**…*

Mr. Trotter: You wouldn't call it a roof?

*Mr. D. Thom: …**I wouldn't call it a roof but water was not coming in where we had the….just some wood they throw up and throw galvanize on it and put up some probably blocks on top to keep down the galvanize.***

……..(at page 18 of Notes of Evidence)

*Mr. Trotter: Okay am now with regard to the description of the house they are saying that there were some walls right, **how high were the walls, they were up to roof height?***

*Mr. D. Thom: **Yes they cross lintel height**.*

Mr. Trotter: All the walls, or just some?

*Mr. D. Thom: All, **all the walls but just part was covered**.*

Mr. Trotter: And you're saying all the walls were covered with galvanize?

*Mr. D. Thom: No **all the walls were up right up but half of the building was covered because it had a piece in the back that was not covered.***

Mr. Trotter: Okay so and you're saying that the roof simply had blocks on them they weren't sealed to the walls they weren't…..

[2] See pages 16 to 27 of the Notes of Evidence dated Thursday 9th October, 2014

Mr. D. Thom: *No was wood* ***was a wood framing on top the walls and galvanize on it****.*

Mr. Trotter: *And the house was not plastered or painted?*

Mr. D. Thom: ***It was not plastered and painted****.*

Mr. Trotter: *Okay and you could recall furniture inside the house?*

Mr. D. Thom: ***I could recall a bed and probably a a a little something like a little dressing table something just to put things on.***

Mr. Trotter: *Dressing table okay and that was in the room in a bedroom but there was not kitchen?*

Mr. D. Thom: *In the room yes. No* ***there was not no kitchen***

Mr. Trotter: ***No fridge no stove in the house?***

Mr. D. Thom: ***No****.*

Mr. Trotter: ***Am so there was this one room and a next room that was uncovered a next section that was uncovered?***

*Mr. D. Thom****:*** ***Yes***

Mr. Trotter: *And that the uncovered section what you're saying walls were also roof height?*

Mr. D . Thom: *Yes yes the whole the whole structure was right up.*

Mr. Trotter: *Okay okay. But it was bare it was nothing in the open section, it was just bare concrete, unplastered walls, unplastered floor?*

Mr. D. Thom: *Yes.*

Mr. Trotter: *You can remember window and doors?*

Mr. D. Thom: ***I could remember yes it had windows ah ah some guy he use to work with named Terrance was working Abel at the time and it had some sale and he purchased some windows.***

Mr. Trotter: *The house had windows he purchased the windows, the house had windows?*

Mr. D. Thom: *No* ***the windows was just when they came it was not installed….***

Mr. Trotter: *It was never installed?*

Mr. D. Thom: *No* ***it was never installed.***

Mr. Trotter: *Am you ever spent nights there?*

Mr. D. Thom: *It was overnight so you'd still sleep in the sleep in the same room with Dereck, under the galvanize?*

Mr. D. Thom: *Yes*

…….(at page 26 of the Notes of Evidence)

Mr. Trotter: *Am in your estimation the structure would not have costed more than $10,000.00?*

Mr. D. Thom: *I don't know about then but now I know it would have been more based on my experience.*

Court: *No no we speaking about then.*

Mr. D. Thom: *Oh then well I am not certain….*

Mr. Trotter: ***But not more than $20,000.00 for sure, not more than $20,000.00..?***

Mr. D. Thom: ***Alright nah because ah de help he got no I don't think so.***

Mr. Trotter: ***And because of the am the complete structure itself you could tell that am there was no painting, no plastering of the wall, just galvanise sheeting on the roof, you could tell that that structure couldn't have would not have cost more than $20,000.00.***

Mr. D. Thom: ***That reasonable enough****."*

[41] Thus, in summary the incomplete structure which the first defendant constructed on the property in contention based on the evidence of the defendant and his witnesses was built in or around 1996/1997 with the help of his friends, consisted for the most part of a foundation with four crooked walls about eight feet that went as high as the lintels and a partial makeshift roof which consisted of a few pieces of wood resting to the top of only part of the structure upon which galvanize pieces were placed and bricks were used to hold down the galvanize. There were no installed windows in the structure and neither the walls nor the flooring had been plastered or painted. The interior of the structure was also bare, merely containing a bed and something in the nature of a table on which to rest things but no kitchen, no fridge and no stove.

[42] Despite the fact that the structure was incomplete, the first defendant and his then wife, Shelly-ann moved into the incomplete structure in or around 1997. However, according to Shelly-ann, once they had moved into the partially covered structure, she had become the subject of verbal and physical abuse of the claimant who would curse and tell her nasty things and throw things at her. She stated that the first defendant instructed her not to retaliate as the claimant was his mom.

[43] The further evidence of both the first defendant and Shelly-ann was that contentions between the claimant and Shelly-ann became so bad that while they resided at the incomplete structure, the claimant got a man by the name of "Oswick" to remove the roof as well as some of the first defendant's belongings. They stated that some of their belongings were burnt and the remainder never recovered. They also averred that the removal of their roof at that time caused them to live in the first defendant's car for

two weeks. The first defendant maintained that although he was able to replace the roof, he would no longer put Shelly-ann through the stress caused by the claimant so the first defendant and Shelly-ann moved out of the property in contention. According to the first defendant, when they moved out, the claimant told him that his house (being the incomplete structure which he built on the property in contention) would always be there for the first defendant but she did not want Shelly-ann there. It followed that during the time that they resided elsewhere, Shelly-ann and the first defendant separated and the first defendant thereafter entered into a relationship with the second defendant with whom he presently shares what is alleged to be a common law relationship.

[44] From the initiation of the relationship between the first and second defendant up until December 2012 they both resided at other residence, being rented residence immediately before December 2012. During the period 2001 to 2011, while the first defendant was not resident at the property in contention, it is the unchallenged evidence that the third defendant started and completed full scale renovations to the very incomplete structure that the first defendant had built.

[45] The third defendant started from about 2001 to substantially renovate her part of the premises. She gradually began to expand the claimant's section of the home by building an additional room and corridor which she connected with the construction of her part of the premises. In 2011, the third defendant dismantled the roof and covered the two sections of the dwelling house with one roof so that there are now two distinct sections with a shared kitchen. It was the evidence of the third defendant that she spent approximately **$400,000.00** in carrying out the construction work utilizing money sourced from her earnings while working with the **Disney Magic Cruise Line** and a **$95,000.00** loan from Eastern Credit Union. In relation to the foundation which the first defendant built, the third defendant alleged that she had compensated the first defendant to the sum of **$3,500.00** for the foundation which he had constructed and paid several bills for legal fees incurred by the first defendant as a result of the several court matters that the first defendant had during the period that she was working on the cruise ship amounting to a sum of **$26,000.00**.

[46] The first defendant however challenged the amount which the third defendant claimed to have spent on the structure. He contended that the property in contention was estimated to be valued at less **$450,000.00**. Bearing that in mind, the first defendant admitted that the third defendant secured **$95,000.00** for the purpose of re-doing the roof. He was also aware that the claimant contributed **$15,000.00** towards the changing of the roof but does not believe that the works done were in excess of **$210,000.00**. Further, the first defendant was adamant that he never received any money as stated to be paid to him by the third defendant and argued that realistically no foundation could cost **$3,500.00**. Moreover, he stated that at no point in time did the third defendant spend **$26,000.00** in legal fees for the first defendant, stating that all his bills were paid by his wife from his own savings.

[47] Further evidence in respect to the circumstances in which the first defendant did construction upon the property in contention as well as the circumstances in which he returned in 2012 to live at the property in contention, was provided by the respective witnesses as follows:

- **Evidence of Brian Collymore**

  Brian Collymore, the cousin of the first defendant, stated that though he did not intend to choose between family members he felt compelled to state that there was a structure partially covered which was built by the first defendant and friends in or around 1997. He stated that he was aware that the first defendant was given permission by the claimant to construct the structure upon learning of the birth of her granddaughter, Akilah Thom. He stated that he was also aware that the third defendant renovated the house which she is now claiming to be hers. Further, he stated that when the first defendant was released from custody, the claimant informed him (Brian Collymore) that she was unhappy with the fact that the first defendant had to pay rent and she wanted him to come back home.

- **Evidence of Dane Smith**

  Dane Smith, another cousin of the defendant stated that in or around 1997, the first defendant asked him to assist with the construction of his home at the back of

the claimant's house on the property in contention. He stated that he together with the first defendant built the foundation and the walls up to ten block height or about seven feet. That took them approximately 3 weeks.

- **Evidence of Carol Thom**

  Carol Thom, the sister-in law of the first defendant, who deposed to have known him for 28 years, stated that she was aware that the first defendant built his house which is now occupied by the third defendant. She stated that she visited him on several occasions after the construction of the house and would overnight there. She further stated that she was aware that the third defendant did renovations on the same property. According to her, the claimant contacted her on several occasions and informed her of her differences with her daughter, the third defendant, which resulted in her husband Darryl Thom being arrested.

- **Evidence of Lyndon Pierre**

  Lyndon Pierre a close friend of the first defendant, who swore to have known the first defendant all his life, stated that in or around 1997 the first defendant asked him to assist with the construction of his home at the back of the claimant's house on the property in contention. He stated that he and the first defendant continued construction from the window height to ring beam. He stated that it took them approximately 1 week.

- **Evidence of Terrance Sheppard**

  Terrance Sheppard, a former co-worker of the first defendant who deposed to have known him for over twenty years, stated that he started working at Abel Building Solutions around 1995. He stated that during that time he was employed as a Sales Representative and that in or around 1996 the first defendant also began working at Abel Building Solutions. According to Sheppard, whilst being employed, he was aware that the first defendant purchased materials for the construction of his home at the back of the claimant's house on the property in contention. He stated that the first defendant obtained a salary deduction for the purchase of the materials.

Exhibited to his witness statement was a copy of one of the first defendants pay statements showing two salary deductions in the amounts of $1,334.00 and $1,568.00 in July 2001 and November 2001 respectively. Sheppard stated that all other relevant documents pertaining to the transactions were unavoidably destroyed due to the company's policy that all documents after ten years are no longer kept on record. Sheppard further stated that he was assigned a company's van which he used to transport the material, inclusive of steel windows and clay foundation blocks to the property for the construction of the first defendant's home. He stated that he was aware that there were other materials, specifically, wall blocks and a door which he was unable to transport in the vehicle.

- **Evidence of Cecil Thom**

  Cecil Thom (retired builder), the ex-husband of the claimant and father of the first and third defendants, stated that he was hired to do construction work in an area to the back of the main house located on the property in contention where he could observe that a foundation was built with three partial walls. He stated he understood that foundation to have been built by the first defendant. In his estimation it was not a professionally done job. The partial walls were not plastered and the bricks were not lined properly. He also observed gaps in the mortar and that inside the walls were filled with sand rather than mortar. The walls were also leaning to one side. He figured that those walls may have been built with a slant or may have leaned to one side with the passage of time. Further he stated that he measured the side of the foundation with a measuring tape and it was approximately 520 square feet. He also made some observations of the walls which were built and figured that it estimated 4 to 8 bricks high. He estimated that the costs of the foundation would have been about $3,500.00 and indicated same to third defendant.

  According to Cecil Thom, he assisted Alicia with the construction of the concrete structure, he was the main contractor on the job and hired workers including his son, Kwami Thom. He was paid for his work and issued receipts to the third defendant. He maintained that before construction was started the walls built by

the first defendant had to be broken down as they were not built properly. In extending the main house, an extra room and bathroom was built and the kitchen was extended. Construction was completed possibly in or about 2011. He stated that he was responsible for doing the finishing touches on the house after it was completed including the tiling of the floors and bathroom walls and the installation of cupboards. He stated that the plumbing was done by Kwami Thom, who was a qualified plumber.

- **Evidence of Nicole Ballantyne**

  Neighbour and family friend, Nicole Ballantyne, stated that one day she observed that the wooden structure that the third defendant lived in was no longer there and in its place was a concrete foundation with four partial walls. She also observed the construction that the third defendant did to the property from 2001 to 2011 with the assistance of her father Cecil Thom.

[48] Additionally, at paragraphs 7, 8, 14 and 21 of the claimant's affidavit in reply filed 16 May 2015, the claimant challenged the extent of the construction done by the first defendant and the circumstances in which it was done. The claimant states at those paragraphs that:

> *"7……it is not true that the First Defendant constructed any part of the subject property. The First Defendant built a foundation which I understand was about 520 square feet and three partial walls about 4 bricks high. I did not give the First Defendant permission to build or gave him any assurance that he could live there. In fact it was my sister, Irma Mitchell who gave the First Defendant permission to build a structure there. Irma Mitchell had no such right to do so; having previously abandoned the subject property for many years. As far as I am concerned I have lived in the property for 63 of my 70 years and I had the final say as to whether the First Defendant could build on the property and so prevented him from building this structure.*
>
> *8. To my recollection this construction took place over a period of 5 days in or about 2000 or 2001. I initially did not object but I did not approve. After giving it some thought I decided that I did not want to live with the First Defendant who still to this day glorifies the criminal and gangster lifestyle and who associates with unsavory characters which I can recall were assisting him to build the foundation. The First Defendant's involvement in criminal activity has always been a source of contention*

between the First Defendant and I and that was the primary reason I prevented him from continuing with construction. My sister did not intervene…..In fact in recognition of my ownership, he simply stopped building as instructed. At that time, the First Defendant was not living at the subject property; having since left since 1996, and never returned until I gave him permission to do so in 2012

……

14…..I would state that I never asked the First Defendant to allow the Third Defendant to remain in the back portion of the subject property. The First Defendant returned to the subject property with my permission in 2012. He was not asserting any right to the back portion of the subject property so I never asked him to allow the First Defendant to stay in the back portion of the subject property to keep the peace. Further, though it is true that I made the First Defendant a beneficiary in my will and indicated the same to him, as testator I have a right to revoke my will which I subsequently did. And though I did indicate to him what the contents of my will was, he never relied on this representation to his detriment. He never carried out any construction work on the subject property.

……

21….The first defendant never invested substantial amount of money into the subject property save and except for painting the room which he now occupies. The electrical work and plumbing was done by Alicia Thom. The First Defendant did build some cupboards however these cupboards are removable and not affixed to the subject property."

(d) <u>Withdrawal of First Defendant's Licence to Stay on Property</u>

[49] Yet, regardless of any licence that was granted by the claimant or any construction that was done by the first defendant, what is certain is that the claimant has made clear to the first and second defendants that she no longer wants them residing at the property in contention and wants them to leave same.

[50] The claimant complained that there were multiple reasons for the withdrawal of the first defendant's licence to stay on the property in question. In her affidavit in support of her claim, she stated at length the reasons as follows:

(i) She was unable to have a peaceful existence with the first and second defendants in her home as they would play very gangster and hip hop music which is full of expletives and sexual content for long periods of time almost every day. Neighbours frequently complained to her as well as the first and

second defendants about the loud music but the first and second defendants never respected the wishes of the neighbours and have never turned the music down in response to any request to do so.

(ii) In addition to the music, the first and second defendants play videos with sexual content at a very loud volume not caring whether the third defendant's minor daughter, the neighbours and/or the claimant hear the nasty sexual content from the videos that are being played. Sometimes the first and second defendants played those sexually explicit videos until very late at night depriving the claimant of sleep so much so that the claimant would have to abandon her side of the dwelling house and go over to the third defendant's side to get a little rest.

(iii) The first and second defendants invite persons of bad character unto the property in contention and the claimant strongly believed that the first defendant was making sex movies at the property in contention. Further, she believed that the first defendant was presently selling illegal stuff at the property in contention given the inordinate amount of traffic that passes through the property in contention. Moreover, she stated that persons visiting at the invitation of the first and second defendants usually had no respect for her privacy and on occasion she even had cause to ask the visitors to leave when she found them within the property in contention in the absence of the first and second defendants.

(iv) The claimant fears for her safety and the safety of the third defendant and her minor daughter, in light of the fact that on occasion persons have come to the property in contention looking for the first defendant and threatening to do harm to him and his family. Notwithstanding that the first defendant is her son she does not feel safe in her own environment and feels threatened and insecure.

(v) The first and second defendants (in particular the first defendant), have been carrying on a persistent campaign of abuse and harassment of the third defendant and her daughter. On many occasions the first defendant had, by use of threats and intimidation, prevented anyone including workmen who came to do work on the third defendant's side of the property from coming

into the yard of the property in contention to visit the third defendant. Video evidence was exhibited in this regard. Further, the first defendant had also maliciously broken and damaged certain parts of the third defendant's portion of the property in contention.

(vi) The first and second defendants provoke, harass and insult the claimant with all kinds of unkind words, taunts and abuses.

(vii) The claimant alleged that on many occasions the first defendant had stolen money as well as clothes, cell phones and other personal effects from her.

[51] According to the claimant, since in or about September 2013, she terminated the permission or licence of the first and second defendants and they have refused to leave. In addition to refusing to vacate the property in contention, the claimant alleged that the first defendant threatened that no one could move him because he is a *"badman"* and he would burn down the property in contention if anyone attempted to force him to leave.

[52] As a result of being powerless to remove the first and second defendants from the property in contention, on or about 15 February 2014 the claimant filed a complaint with a Justice of the Peace at the Arima Magistrate's Court against the second defendant seeking an exclusion order against her. She did so because she claimed that she knew that if the second defendant left the property in contention then the first defendant would, in all likelihood, follow her. She stated that on 4 March 2014, a police officer arrived at the property in contention and he purported to serve the summons issued by the Magistrate Court on the basis of the complaint the claimant filed against the second defendant. The first defendant, when he observed that it was a summons against the second defendant on the basis of the claimant's claim, proceeded to tell the police officer that the claimant had no rights to the house, presenting the Will that the claimant had made in his favour to the police officer and stating that nobody could move him from the property in contention. The claimant's evidence was that following that incident confrontation between her and the first and second defendants heightened and it appears that the living situation continues to worsen.

[53] The first defendant denied all and any maltreatment of the claimant emphasizing that she is his mother and that, no matter what the situation, he has respect for her. He stated that he and the second defendant did not and do not add to the claimant's stress; rather he alleged that the claimant has always been the aggressor and that she creates the stressful environment. Video evidence was exhibited in proof of same. The defendant stated that he would in fact often assist the claimant and would take her to chemotherapy and cancer treatment on few occasions.

[54] Further, the first defendant admitted that he has a criminal record to the extent that he has three convictions but noted that during his time in prison he reformed himself and had in fact obtained two awards as valedictorian for the MSTTE programme in life skills and upholstery and another for the best student. Additionally, the first defendant noted that he had 8 CXC passes, a technician diploma in general draughting from John S. Donaldson Technical Institute, a certificate in Christian counseling from the West Indies School of Theology and Levels 1-3 Certificates in AutoCAD from Central Technology Centre Limited. However, no certificates or proof of these awards and/or training were produced in evidence. He acknowledged that despite his foolish decisions in the past for which he had paid the price, he was not a habitual criminal as alleged by the claimant and since that time has not engaged in criminal activity.

[55] The defendant further stated that the reasons outlined by the claimant for wanting the first and second defendants to leave the property in contention are ill-founded and not true and that the claimant has no basis for asking him to leave the property as he too has an equitable interest in it. He stated that the claimant would have made certain representations to him causing him to act to his detriment and invest money to construct his portion of the property in contention which is now being occupied by the third defendant. To that end he stated:

(i) He is self employed and the owner of Dereck Sylvester Thom and Associates General Construction Company and he operates from his home address (at the property in contention). Thus, despite having a criminal record, he is capable of living on his own, contrary to what is said by the claimant.

(ii) The claimant did in fact allow him to live in the master bedroom when he returned in December 2012 because it was her request that he and the second defendant move into the property in contention and further that the claimant asked him to allow the third defendant to remain in the back portion of the property in contention to keep the peace.

(iii) The claimant also said that if he came to live in the front portion with her, it would eventually be his. That intention, he stated, was also reflected in the claimant's last Will and Testament dated 12 October 2012 which was exhibited by the first defendant.

(iv) The defendant admitted that he usually plays dancehall and vintage soca music but that he does not play it loudly. He denied ever playing or making sex videos and further denied ever bringing or inviting persons of bad character unto the property in contention. He stated that he would never disrespect the claimant and that he even asked for mediation of the situation from the outset which was refused by the third defendant who influenced the claimant to pursue his removal from the property in contention via court proceedings.

[56] In conclusion the first defendant maintained that he lived at the property in contention for most of his childhood years and part of his adult life. He stated he was now 40 years of age and had invested a substantial amount of money into the property in contention whilst there. He was adamant that he had an equitable interest in the property and would like the court to allow him to return to live in the back portion of the property in contention which he alleged was constructed by him with the consent of both the claimant and David Smith (the latter being legally entitled to the property in contention). According to the first defendant the third defendant took the back portion of the property without his consent and modified it to her likeness. Apart from the physical construction of the back portion, the first defendant alleged that he would have also painted, installed plumbing and cupboards, and that over the years he would have paid his share and the claimant's share of the light bill and all cable bills.

[57] The first defendant also emphasised that it was unfair and inequitable for the claimant who is not the legal owner to have him removed from the property in contention knowing that certain representations were made to him which he acted upon to his detriment. In the circumstances, the first defendant prayed that the court dismiss the claim and order that he has an equitable interest in the property in contention based on proprietary estoppel.

III. ISSUES BEFORE THE COURT FOR DETERMINATION

[58] Having reviewed the facts and read the submissions of counsel for the respective parties, I have deduced that there are both issues of fact and issues of law existent in the instant matter for determination by this court.

[59] **The two main issues of fact are**:

(i) On a balance of probabilities, what were the circumstances under which the first defendant came to reside at the property in contention in December 2012? and

(ii) What was the extent of the construction undertaken by the first defendant in or around 1997 and whether that construction was done upon an assurance or representation made by the claimant in or around 1996/1997 that the first defendant could build and reside at the property in contention?

[60] **The two main issues of law are**:

(i) Whether a mere licence to reside at the property in contention was granted by the claimant to the first and second defendants: a licence which could be revoked at any time by the claimant? and

(ii) Whether the first and second defendants have proved their case of proprietary estoppel against the claimant, thereby proving an irrevocable licence entitling them to remain in residence at the property in contention?

Each of these issues shall be canvassed separately and in turn.

IV. THE LAW AND ITS APPLICATION TO THE ISSUES

(a) Submissions

[61] Counsel for the claimant submitted that the claimant is the full beneficial owner of the property in contention save and except for the interest of the third defendant. Thus it was submitted that the claimant had the right to revoke the licence which she gave the first and second defendants to occupy the property in contention. According to counsel for the claimant, a substantial portion of the claimant's affidavit detailed why she had terminated the first and second defendants' licence. The claimant deposed that she was the victim of constant harassment and taunts from the first and second defendants. Additionally, it was contended that though the claimant did make a provision in her Will giving the first defendant her portion of the property in contention she had revoked that Will.

[62] Moreover, with regard to the first and second defendants' reliance on the doctrine of proprietary estoppel, counsel for the claimant submitted that when the facts and evidence in the instant matter are considered objectively, the first defendant's case is exposed as one which has failed to prove the elements of proprietary estoppel and which was attempting to expand the limits of proprietary estoppel into bounds unknown to case law. Counsel for the claimant was adamant that to apply the doctrine of proprietary estoppels in this case would be gravely unconscionable, not on the part of the claimant, but rather on the part of the first and second defendants, who refused to vacate the property in contention.

[63] On the other hand, counsel for the first and second defendants contended that their defence was one of proprietary estoppel. To that end counsel contended that this was a case whereby the claimant gave the first defendant authorisation to construct a structure in or around 1996 and upon that authorisation the first defendant constructed a concrete structure which was partially covered and moved into same. The first defendant was subsequently pressured into leaving the property in contention when contentions arose between the claimant and the first defendant's wife, Shelly-ann. The first defendant contended that nonetheless when he and Shelly-ann moved out of the property in

contention, the claimant assured him that he could always come back to the incomplete structure which he built on the property in contention on the condition that his wife Shelly-ann did not return to live there with him.

[64] The first defendant contended that he then began renting, until in or around December 2012 when the claimant asked both him and second defendant to move into the property in contention. At that time, the first defendant's portion of the property in contention was being occupied by his sister, the third defendant. In this regard, the claimant informed the first defendant that his sister should be left in that portion of the property so as to keep the peace and assured him that he would inherit her (the claimant's) share in the property in contention. The first defendant also emphasised that in light of the assurances of the claimant he and the second defendant gave up their secured apartment to return to the property in contention on the premise that he would inherit a share, only to be asked by the claimant to leave the property in contention a little more than a year later in or around late 2013/early 2014.

(b) <u>Law</u>

[65] The instant matter brings into focus the law as it relates to (i) a licence to occupy property and (ii) the doctrine of proprietary estoppel. Particularly for the purposes of the instant matter it is clear that those two areas of law are inextricably related.

[66] It is well-established that a licence by itself is merely permission given by the owner or occupier of property ("the licensor") to another person (referred to as "the licensee") to enter upon the property in question for some specific purpose, be it to visit, work, reside or the like. It is further well-established in case law that a bare licence does not of itself create for the licensee any legal interest in the property which the licensee is permitted to enter and therefore, a bare licence that is given to a licensee may be revoked at any time by the owner or occupier of the property without any need for providing notice of such revocation.

[67] The doctrine of proprietary estoppel is closely related to the law in respect of licences to occupy property, in that although it is established that a licence may be

revoked at any time by the owner or occupier of property, the doctrine of proprietary estoppel will prevent the owner or occupier of property from revoking the licensee's licence in circumstances where the licensee has, as a result of his/her detrimental reliance on the representations/conduct of the owner or occupier of property, been led to reasonably believe that he/she has some right or benefit in the property which would make it unconscionable for the licence to be subsequently revoked. In other words, an irrevocable licence would be created in favour of a licensee in circumstances where it would be inequitable and unconscionable to allow the owner or occupier of the property to enforce strict legal rights on the licensee in light of the conduct and dealings which have taken place between the parties.

[68] This is an area of law for which our courts have been often engaged and therefore in addition to the authorities proffered by counsel for the claimant and defendants, the court shall also make reference to some additional authorities, including authorities from the Privy Council.

[69] In essence, as recognised in the case law submitted by counsel for both sides, there are three essential elements of the doctrine of proprietary estoppels, the presence of which assist the court in determining the fundamental question of whether it would be unconscionable for a licence to be revoked in a given set of circumstances. In the authority of **Thorner v. Majors and others (2009) UKHL 18**, **Lord Walker** identified and explained the three main elements of proprietary estoppel which were then summarised by **Lord Scott at para. 15** of the judgment as follows:

> *"Lord Walker, in para. 29 of his opinion, identified* ***the three main elements requisite for a claim based on proprietary estoppel*** *as,* ***first, a representation made or assurance given to the claimant; second, reliance by the claimant on the representation or assurance; and, third, some detriment incurred by the claimant as a consequence of that reliance.*** *These elements would, I think, always be necessary but might, in a particular case, not be sufficient. Thus, for example,* ***the representation or assurance would need to have been sufficiently clear and unequivocal; the reliance by the claimant would need to have been reasonable in all the circumstances; and the detriment would need to have been sufficiently substantial to justify the intervention of equity****."*

[70] Notably and of relevance to the instant matter, **Lord Walker** in **Thorner (supra)** further explained that in relation to the first element, that is, the clear representation or assurance, *"it is a necessary element of proprietary estoppels that the assurance given to the [licensee] (expressly or impliedly, or, in standing-by cases, tacitly) should relate to identified property* ***owned (or, perhaps, about to be owned) by the [licensor]****"*.

[71] Furthermore, in relation to the second element of reasonable reliance, it is recognised that there must be a causal link between the representation of entitlement and the change of position incurred by the licensee. Additionally, the representation by the licensor must be of such a nature that it could be reasonably relied on. Lord Walker in **Thorner (supra)** usefully appears to have approved of the approach adopted by the Court of Appeal in determining whether a statement made by a licensor in relation to the disposition of his estate after his death could have been reasonably relied on by a licensee as being sufficiently clear and unambiguous so as to found an estoppel. The approach adopted as outlined at para. 74 of the judgment was that:

> *"....a statement by A that he will leave certain property on his death to B could have one of two meanings.* ***It might constitute an assurance that this is what A is binding himself to do; in other words, it might be a commitment by A to leave the property to B****. Or it might be no more than a statement of A's current intention, which can be subject to change with the passage of time, with or without a change of circumstances. (In that connection, it seems to me, in agreement with both parties to this appeal, that there is nothing special, as a matter of principle, in relation to a statement about leaving property in a will as against any other statement about one's future actions.)* ***The Court of Appeal's reasoning was that, as a statement must be a "clear and unambiguous" assurance to found an estoppel, a claim such as that raised in this case could only succeed if it could be established that the statement relied on was clearly expressed so as to have the former, not the latter, meaning****."*

[72] With regard to the element of detriment, it is trite law that expenditure on construction and labour can form the basis of detriment for a proprietary estoppel claim: **Willmott v. Barber (1880) 15 Ch D 96**. However, it ought to be borne in mind, as emphasised by Slade LJ in **Jones v Watkins CA, 26 November 1987 (Official Transcript)** that the court's intervention in a proprietary estoppel case is based on the

need to avoid the licensee who is claiming estoppel from suffering a "*substantial detriment*". Slade LJ explained the element of detriment as thus:

> *"**There is no doubt that for proprietary estoppel to arise the person claiming must have incurred expenditure or otherwise have prejudiced himself or acted to his detriment**": (Greasley v Cook [1980] 3 All ER 710, [1980] 1 WLR 1306, at pages 1313-1314 per Dunn LJ). Furthermore**, the court must be satisfied that it was the representation or encouragement of the other party which led him to suffer the detriment asserted**. As Mrs Hill stressed in her argument, once the court has found representations or encouragement calculated to influence the judgment of a reasonable man, the court will readily presume that he was so influenced: (see, for example, Greasley v Cooke [1980] 3 All ER 710, [1980] 1 WLR 1306, at page 1311 per Lord Denning MR). If, however, on an assessment of the evidence as a whole, the court takes the view that, on the balance of probabilities, there is no causal connection between the encouragement or representations relied on and an alleged item of detriment, that item cannot, in my judgment, found a claim based on proprietary estoppel.*
>
> *There are three other general observations I would make in the context of detriment. First, as the judge said, **the detriment which the representee must be shown to have suffered falls to be judged at the moment when the representor proposes to go back on his representation**: (see Spencer Bower & Turner on Estoppel by Representation (3rd Edition) at page 110). Secondly, **in considering whether the detriment is sufficiently substantial, the test, in my judgment, must be "whether it appears unjust or inequitable that the representor should now be allowed to resile from his representation, having regard to what the representee has done, or refrained from doing in reliance on the representation**.....*
>
> *Thirdly, if a claim based on proprietary estoppel is to be made, particularly against the estate of a deceased person, **the items of detriment relied on should, in my judgment, be specifically alleged and proved. The court should not, in my view, readily infer detriment which has not been specifically alleged and proved**."*

[73] Yet, it is equally important to note (as has been contended by counsel for the claimant) that it has been largely accepted that with regard to the element of detriment, the doctrine of proprietary estoppel inhibits the denial of the licensor of an assured state of affairs only until the detriment is removed or the innocent party is otherwise compensated. Once the detriment has ceased or has been otherwise paid for there is nothing unconscionable in a licensor insisting on reverting to his/her former relationship

with the licensee and enforcing his/her (the licensor's) strict legal rights. That principle was accepted by the Privy Council in the authorities of **Knowles v Knowles (2008) UKPC 30** and **Clarke v Swaby (2007) UKPC 1**.

[74] In the latter case of **Clarke (supra)**, it was acknowledged by Lord Walker that in some cases expenditure spent by the licensee in reliance of the licensor's representation may be sufficiently balanced-off with the licensee's rent-free occupation of the licensor's property in such a way as to eliminate the element of detriment caused to the licensee. To that end, Lord Walker stated at para. 18 that:

> *"....it is clear that the court had a wide (though not uncontrolled) discretion to fashion a remedy providing (in the words of Scarman LJ in Crabb v Arun District Council [1976] Ch 179, 198, [1975] 3 All ER 865, [1975] 3 WLR 847) "the minimum equity to do justice to the Plaintiff" (or in this case the Defendant, who was in substance counterclaiming).* ***Often the equity can best be satisfied by a monetary award****.* ***Sometimes even a monetary award is inappropriate where (as here) the Claimant's expenditure on improvements to a dwelling has been accompanied and followed by years of rent-free accommodation in the dwelling in such a way as to satisfy the equity and leave it exhausted****: see the judgment of Hobhouse LJ in Sledmore v Dalby (1996) 72 P & CR 196****, noted in Bright & McFarlane, Proprietary Estoppel and Property Rights [2005] CLJ 449, 476-477."*

[75] The case of **Sledmore v Dalby (1996) 72 P & CR 196**, which is referred to in the case of **Clarke** (supra), is (as submitted by counsel for the claimant) instructive on this point. As submitted by counsel for the claimant, in **Sledmore (supra)** a lady and her husband purchased a house in their own names for occupation by their daughter and son-in-law. The son-in-law carried out substantial improvements to the property in reliance on his expectation and encouraged by the lady's husband, that he would be allowed rent-free occupation for the remainder of his life. After the death of the lady's daughter, the son-in-law enjoyed rent-free occupation for another 17 years. The lady, now a widow, finally sued for possession on the ground that she required her house for her own occupation. The Court of Appeal agreed that the son-in-law had initially acquired an equity based on estoppel but held that the force of this "equity had become spent over the intervening years in view of the son-in-law's prolonged period of rent-free residence".

[76] In **Knowles (supra)** Sir Henry Brooke of the Privy Council commented at para. 27 that:

> *"In Jennings v Rice [2002] EWCA Civ 159, [2003] 1 FCR 501, [2003] 1 P & CR 100 Robert Walker LJ said at para 56 that the essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result……**While recourse to the doctrine of estoppel provides a welcome means of effecting justice when the facts demand it, it is equally important that the courts do not penalise those who through acts of kindness simply allow other members of their family to inhabit their property rent free.** In E & L Berg Homes Ltd v Grey (1979) 253 EG 473, [1980] 1 EGLR 103 Ormrod LJ said at p 108:*
>
> > *". . . **I think it important that this court should not do or say anything which creates the impression that people are liable to be penalised for not enforcing their strict legal rights. It is a very unfortunate state of affairs when people feel obliged to take steps which they do not wish to take, in order to preserve their legal rights, and prevent the other party acquiring rights against them. So the court in using its equitable jurisdiction must, in my judgment, approach these cases with extreme care**."*

[77] Bearing in mind the aforementioned principles, it was restated by the Privy Council in **Blue Haven Enterprises Ltd. v. Tully and anor. (2006) UKPC 17** that the ultimate question is whether it would be unconscionable for a licence to be revoked in a given set of circumstances. At paras. 22 to 23 of the judgment in **Blue Haven Enterprises Ltd (supra),** Lord Scott expressed the Privy Council's approval of the principle as set out by Oliver J (as he then was) in **Taylor Fashions Ltd v. Liverpool Victoria Trustees Co. Ltd (note) (1982) QB 133, 151 – 152**, where it was stated:

> *"The more recent cases indicate, in my judgment, that **the application of the Ramsden v Dyson ….. principle - whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial - requires a much broader approach which is directed at ascertaining whether, in particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment** than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour."* [Emphasis added]

(c) <u>Application of the law to the issue</u>

[78] From the outset, it is noted that apart from the first and second defendants, none of the other witnesses to the instant matter has challenged the fact that the claimant is indeed the beneficial owner of the property in contention. While it is accepted by this court that there is evidence tracing from the aforementioned Crown Grant and Certificate of Title of other persons, namely, the children of Henrietta Mc Clean (David Smith and Judy Williams and their children) who may have an interest in the property consequent to the rights of survivorship, the court must also acknowledge that the unchallenged evidence is that the claimant has been in undisturbed continuous possession of the property in contention for nearly 43 years and has for all those years been exercising the rights of an owner to the exclusion of all other persons.

[79] Even the daughter of David Smith, Ms. Betty Smith, has without hesitation acknowledged the title of the claimant as beneficial owner to the property in contention and has further stated that she does not know of any other family members superseding the claimant's authority and control over the property in contention. To that, it is added that even the first and second defendants who have sort to challenge the status of the claimant as beneficial owner, have as is convenient to them sought to rely on the future rights to the property that were granted to the first defendant through the claimant's Will dated 12 October 2012. To accept that the claimant's Will, as it relates to the devising of ownership of the property in contention, has some force; would be to inevitably accept that the claimant has some beneficial interest in the land which is capable of being devised and inherited.

[80] Furthermore, it is noted that even the defence of proprietary estoppel on which the first and second defendants ironically solely and strongly rely would require that the claimant was either the legal or beneficial owner of the property in contention if any assurance given by her in respect of the property is to be relied on by another. As outlined in my review of the law, this was made clear by the court in **<u>Thorner</u> (supra)** in which Lord Walker stated that *"it is a necessary element of proprietary estoppel that the*

assurance given to the [licensee]…should relate to identified property ***owned (or perhaps, about to be owned)*** *by the [licensor]".*

[81] In light of the evidence, while the court neither makes any final declaration on the matter of ownership of the property nor has the court been so engaged (in light of the relief claimed) to make such a declaration, for the purpose of the instant claim, the court accepts that the claimant has been, and is acknowledged as, the beneficial owner of the property in contention.

[82] The court has no doubt that the claimant did permit the first and second defendants to occupy the property in contention in December 2012. In fact, during cross-examination the claimant admitted that she did ask the first defendant to give up his rental apartment in Las Lomas to live with her at the property in contention. While it is clear from the evidence, in particular the Will of the claimant dated 12 October 2012, that the claimant had intended to devise her interest in a portion of the property in contention to the first defendant, it does not appear from the evidence that the licence granted to the first defendant to reside at the property in contention was accompanied by any assurance of an interest in the property ***inter vivos***, that is, during the claimant's lifetime.

[83] It seems clear to me from the evidence, that the interest in the property which the claimant intended to give to the first defendant was intended to be testamentary. In fact, the date of the Will (12 October 2012) predated the date on which the first and second defendants were granted licence to occupy the property (December 2012). Thus, the Will hardly serves as evidence that the claimant assured the first defendant that he would obtain an ***inter vivos*** interest in the property while she was still alive. Further, given the fact that the Will predates the licence, it also does not seem likely that the first defendant's inheritance was made conditional upon him accepting the licence to reside with the claimant.

[84] I am of the view that the claimant's explanation for granting the licence was more convincing and likely to be true. In essence, she explained that as a mother she wanted to assist the defendant through what she believed to be a troubled time for him. Under cross-

examination she appeared to have genuinely believed that the first defendant's situation was such that he was unemployed and renting accommodation. She seemed completely unaware of any possibility that the defendant was self-employed and the owner of his own construction company which he operated at home, as he alleged. Certainly, her reason for wanting to Will her portion of the property to the first defendant was because he was the only of the three of her children who appeared to still be trying to *'settle himself'* in light of the set-back caused by his previous criminal convictions and record. Further, this court finds that the first defendant's allegations that his mother asked that he reside at the property so as to keep her secure from the third defendant is quite unlikely particularly in light of the video and witness evidence which ironically show the claimant and the first and second defendants to be very much at war with each other and the claimant has testified that that has been the state of their living situation since the first and second defendants moved into the property.

[85] The court is mindful of the approach accepted by the court in **Thorner (supra)** that a claim of proprietary estoppel could only succeed if it could be established that the statement relied on was clearly expressed in the terms contended to have been relied on by the licensee. This court is of the opinion that the invitation given by the claimant to the first and second defendants to occupy the claimant's bedroom at the property in contention was simply a kind gesture by a mother to her son which turned out quite sour, but which was merely intended to assist the first defendant in getting his life together by providing him with rent-free accommodation so that he could perhaps build up his savings and start seeing his way.

[86] The first defendant alleged that around 1997 he constructed an incomplete house structure at the back of the property in contention after a representation had been made to him by the claimant that he could build at the back of the property so that his first child, Akilah Thom, who was born in June 1996, could have somewhere proper to live. That incomplete structure was in 2001 demolished save the foundation and totally renovated and completed at the expense of the third defendant. The first defendant stated that the only reason that he had not made claim for the structure in December 2012 when he returned to the property in contention was because the claimant asked him to allow the

third defendant to remain at the structure so as to keep the peace. The claimant, however, admitted that although she did see the defendant building the structure to the back of the property and did not initially object, she always had not approved and therefore within five days of construction she requested that the defendant desist from building upon the property in contention.

[87] It was the claimant's evidence that the only thing that had been constructed by the first defendant was the concrete foundation. However, that evidence was contradicted by her own witnesses, Cecil Thom and Nicole Ballantyne, both of whom admitted that both the foundation and partial walls were built. It was estimated by the claimant, Cecil Thom and the third defendant that the costs of the work done could not have amounted to more than **$3,500.00**. However, the first defendant stated he spent about **$70,000.00** to **$100,000.00** in construction.

[88] In the view of the court, the most convincing evidence as to the extent of the construction work that was done and the reasonable costs of the construction work came from the first defendant's own witness, Daryl Thom, who appeared very sure that the structure could not have been valued more than **$20,000.00**. In considering that value, Daryl Thom, testified that he was both present when the structure was being built as well as he sometimes slept over-night at the structure.

[89] Under cross-examination, Daryl Thom, appeared to be very truthful about the extent of construction done by the first defendant. He stated plainly that the structure was unprofessionally done by the first defendant and a few friends. He noted that for the most part it consisted of a foundation with four crooked walls about eight feet that went as high as the lintels and a partial makeshift roof which consisted of a few pieces of wood resting to the top of only part of the structure upon which pieces of galvanized sheeting were placed. He testified that the galvanized sheets were not fastened to the frame but rocks or bricks were used to hold down the galvanized sheets. There were no installed windows in the structure and neither the walls nor the flooring had been plastered or painted. The interior of the structure was also bare, merely containing a bed and something like a dressing table but no kitchen, no refrigerator and no stove.

[90] Yet, regardless of how unprofessionally the incomplete structure may have been built, the court recognises that a reasonable amount of about **$20,000.00** would have been spent on the structure by the first defendant whom, if not by the claimant's expressed representation, would certainly, as a result of the claimant's acquiescence during the five day period of construction before she expressly objected, have been caused to believe that he had the claimant's permission to build a house upon the property in contention for his residence.

[91] However, even when the court takes into consideration the money expended by the defendant in construction, the court is mindful that only the foundation which the first defendant constructed remained to the benefit of the claimant and the third defendant. The remainder of the construction had to be demolished at the claimant's and third defendants' expense as it had not been properly built. Moreover, even if the full reasonable sum of the construction, which is estimated at $20,000.00, is taken to be expenditure lost by the first defendant, that sum ought to be properly set-off against the fact that the first defendant was permitted by the claimant to live rent-free at the property in contention from December 2012 to present. Had he been renting alternative accommodation, as he had been doing immediately prior to the grant of the licence, the average amount that he would have paid in rent would no doubt have far exceeded the amount of $20,000.00. To that end, applying the authorities of **Knowles (supra), Clarke (supra)** and **Sledmore (supra)**, even if the court found that the $20,000.00 represented a detriment incurred by the first defendant, such detriment could not be said to be substantial nor still existing as the amount expended could be balanced-off with the first and second defendants' rent-free accommodation consequent on the licence granted by the claimant. Any equity acquired, if any, would certainly have been exhausted by the number of years of rent-free accommodation.

[92] Therefore, it is clear in the circumstances that the elements of proprietary estoppel have not been established by the first and second defendants. The alleged representation of the claimant was not sufficiently clear so as to be reasonably relied upon by the first and second defendants as an assurance that they would be entitled to occupy the property in contention perpetually during the life time of the claimant. Moreover, no substantial

detriment has accrued to the first and second defendants, which would make it inequitable or unconscionable for the licence granted by the claimant to now be revoked.

V. DISPOSITION

[93] In the premises, the claimant's claim has succeeded. Accordingly, the court proposes to grant a declaration that the claimant is entitled to possession of the property in contention as against the first and second defendants. Secondly, it is quite clear that parties are unable to co-exist in the property in contention so that although a sufficient time is to be afforded to the defendants to vacate the premises the time in which for them to do so must also be short enough to avoid further confrontation among all parties concerned, including the third defendant. The first and second defendants ought to have made suitable alternative accommodation arrangements in the interim since it ought to have been in their contemplation that there is always the likelihood that the matter may be decided against them. It is my view that a period spanning to the end of March 2016 would be an appropriate time to allow for the parties to vacate the premises. During this period it appears wise for the court to put an injunction in place to restrain/prohibit all parties from interfering with each other so that the court's order can be complied with while the parties peacefully co-exist during this transitional period.

[94] In relation to the issue of costs, there is no reason why the court should divert from the general rule that costs should follow the event. In fact this is the ideal case for that rule to apply. Accordingly, the claimant will be entitled to her costs incurred for prosecuting her claim all the way to trial to be quantified on the prescribed scale as provided for by CPR Part 67.5(1). Since the claim is not one for a monetary sum and neither party has applied to the court to determine the value to be placed on the claim under CPR Part 67.6(1)(a), then this claim is deemed to be a claim for $50,000.00 in accordance with CPR Part 67.5(2)(c) for which the recoverable costs would be $14,000.00 on the prescribed scale.

[95] The claim for interest pursuant to section 25 of the Supreme Court of Judicature Act is not applicable to these proceedings and therefore does not arise for consideration.

[96] Accordingly, the order of the court is as follows:

ORDER:

1. **This Court declares that the claimant is entitled to vacant possession of the property known and assessed as No. 67 Waterloo Road, Arouca (property in contention) as against the first and second defendants.**
2. **The first and second defendants shall vacate the property in contention by the 31st March, 2016 and thereby deliver vacant possession to the claimant.**
3. **There shall be a stay of execution for a period of six weeks from the date of this order to allow the first and second defendants to relocate to alternative accommodation.**
4. **During the period of the stay of execution all parties are prohibited from tormenting, harassing, threatening, abusing, molesting or in any way whatsoever or howsoever from interfering with each other or their peaceful enjoyment of the property in contention.**
5. **The first and second defendants are to pay to the claimant prescribed costs quantified in the sum of $14,000.00 pursuant to CPR Part 67.5(2)(c).**

Dated this 19th day of February, 2016

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Robin N. Mohammed
Judge