REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

SUB-REGISTRY, SAN FERNANDO

Claim No. CV2020-04429

Between

ANTHONY CUDJOE

Claimant

AND

MARGUERITE CUDJOE

also called

MARGUERITE PHYLLIS DUNTIN CUDJOE

(wrongfully sued as Phyllis Duntin Cudjoe)

Defendant

Before the Honourable Mr Justice R. Rahim

Date of Delivery: August 17, 2023.

Appearances:

Claimant: P. Persad Maharaj

Defendant: M. Vialva instructed by C.R. Joseph-Boodoosingh.

JUDGMENT

Introduction

1. By Fixed Date Claim Form and Statement of Case filed on December 17, 2020, the claimant initiated proceedings seeking possession of a certain parcel of land and all the structures that exists on same. By Defence and Counterclaim filed on March 1, 2021, the defendant claims to have an equitable interest in one (1) of the properties on the parcel having lived in same for more than two (2) decades. The claimant's brother, now deceased, Alvin Cudjoe was the husband of the defendant. Alvin died on January 30, 2017.

The Claimant's case on the disputed property

2. The claimant is the paper title holder by Deed executed on December 27, 2002 and registered as **DE200303278085** of lot No. 332A Silk Cotton Road, Battoo Avenue, Marabella, in the Ward of Naparima in the Island of Trinidad comprising five thousand six hundred and twenty square feet (5,620 sq. ft.) be the same more or less bounded on the North and partly by lot no.331, on the South partly by a drain reserve and partly by lot no. 331, on the East partly by lot no. 331 and partly by a drain reserve and on the West partly by lot no. 333 and partly by a drain reserve four feet wide which said parcel of land is shown coloured pink as lot no. 332A on the plan annexed to Deed No. 3143 of 1973 together with the two wooden dwelling houses thereon and the appurtenances thereto belonging[1]. The disputed property is one of the wooden dwelling houses occupied by the defendant.

3. Both houses were built by the claimant's father, Moses Alexander Cudjoe ("Moses"), the predecessor in title of the land. Prior to Moses' death, the

[1] TB 1, PDF 17-20, namely deed of conveyance dated December 27, 2002.

house now occupied by the defendant, ("house number 332") was once occupied by the claimant and Alvin while Moses lived in the house now occupied by the claimant and his family.

4. When Alvin got married to the defendant on February 17, 2001, the defendant began living with him. The claimant by this time had moved into Moses' home to care for him. Sometime after, whilst living with his father, he developed difficulties climbing stairs and the claimant subsequently built an annex to the house in order to assist with his mobility issues. It was his testimony in chief that both he and Alvin constructed the annex.

5. During this period, the defendant and Alvin began to harass and intimidate Moses by constantly playing loud music and refusing to turn same down when asked to do so. The police were called in from time to time. After Moses died on February 7, 2002, the couple continued to harass the claimant and his wife. It was at this time that the claimant filed possession proceedings in the Magistrate's Court (the proceedings has since been stayed as the defendant has purported to have some equitable right in the property).

6. The claimant contends that the defendant does not have any title right nor interest in house number 332 but has in fact been living there with his permission. As such being the lawful owner, he has revoked her licence to live in the house by a Notice to Quit dated November 28, 2018, which sought vacant possession by December 30, 2018.[2]

7. The claimant has also written other letters informing the defendant that he planned to fence the premises and carry out other remedial works.[3] A

[2] TB 1, PDF 25, namely Notice to Quit dated November 28, 2018.
[3] TB 1, PDF 34-36, namely letters to the defendant.

pre-action letter was sent from the offices of his attorney dated October 16, 2020[4], demanding vacant possession.

8. The claimant has therefore sought an order of possession of the premises occupied by the defendant, damages for trespass, mesne profits and injunctive relief.

Defence and Counterclaim

9. The defendant agrees that there are two (2) separate dwelling houses on the lands but avers that there are multiple structures that bring to total four (4) structures and not three (3) as the claimant has posited. It appears that both parties have referred to their respective annexes as structures. The claimant lives in the front building ("house number 350") and the defendant occupies one out of the three (3) structures that exist at the back. The defendant admits to being aware of a Deed for house number 350 and claims that after conducting a title search upon receiving the Notice to Quit in 2018, she discovered there was also a Deed for house number 332. No such Deed has been placed before the court. In fact, the claimant has produced a cadastral plan which shows lot 332A and 332B. 332B was at one time owned by Moses. In that regard it appears clear that the disputed property also lies within lot 332A.

10. The defendant has laid challenge to the validity of the Deed for house number 332 on the basis of the mental incapacity of Moses at the time of execution, stating that he was gravely ill and coerced into signing it and subsequently died a month and a few days after its execution. At no time was she aware that the land was transferred to the claimant,

[4] TB 1, PDF 39-42, namely Pre-Action protocol letter dated October 16, 2020.

nor did he ever bring this to her attention. He also never expressly nor impliedly allowed her or her late husband to live on the disputed land.

11. In relation to the issue of the mental capacity of Moses the following is pleaded at paragraph 2 of the Defence:

> *"The defendant will further contend that the said Moses Alexander Cudjoe (Deceased) died a mere one month and eleven days after the purported execution of the Deed vesting title in the claimant. As such it is contended that the deceased lacked the requisite mental and physical capacity to execute the said Deed of his own free will and put the claimant to strict proof of the validity of the document."*

12. In her witness statement in addition to the above, the defendant added that before his death Moses was not physically able to do things for himself, had lost his right sense of mind, would ramble and not remember things. This was not accepted by the claimant. In sum this was all that was said by the defendant who offered no supporting testimony or proof whether by medical evidence or otherwise. The court is therefore not satisfied that that there is sufficient before it to raise suspicion on the mental capacity of Moses at the time he executed the Deed. What there is, is simply an allegation of same by the defendant. Had there been sufficient evidence to put the court on suspicion, the burden would have shifted to the claimant to allay that suspicion. In the circumstances of the evidence presented, no such burden arises. In any event the evidence of the claimant is that Moses suffered a stroke a couple of months before he executed the Deed. He thereafter became bedridden. It was the evidence in cross-examination that Moses was immobile on the left side, but he could still move around. This of course does not raise suspicion in the court's mind in relation to his mental capacity to execute the Deed as there

was no evidence of same. It also does not raise suspicion in relation to his physical capacity to execute the Deed as it is clear that the stroke had affected one side of his body and he was capable of movement and presumably writing with the other side. It the duty of the defendant to produce some reliable evidence on that issue so that the burden shifts to the claimant to prove that despite the stroke Moses would nonetheless have had the capacity and capability to execute the Deed but the defendant has failed so to do. The court therefore does not consider the issue of the capacity of Moses to be a live issue hereafter.

13. The defendant averred that she was not married to Alvin in 2001 but on February 17, 2002[5], and that their relationship began in 1997 but that she began living at house number 332 in 1998. She contends that the claimant did not live at house number 350 during this time but visited for brief periods.

14. She denies that the claimant gave her permission by way of a revocable licence to live in house number 332 and avers that in or around 1983 Moses and Alvin constructed the property for the sole occupation of her husband. She also pleaded that she and her husband had been expending money on maintaining and extending the home and paying for the utilities[6], which she continued to do after his death. This was based on Moses' promise that the house belonged to the couple and no one could remove them. She has therefore relied on the doctrine of promissory estoppel.

15. She has admitted to receiving the letters and the Notice to Quit sent by the claimant, but this was done as a tactic to harass her. She has

[5] TB 1, PDF 70 namely duplicate of Marriage Register.
[6] TB 1, PDF 71-78 namely invoices and bills in the name of the defendant

also pleaded that the claimant has employed various intimidatory tactics to remove her from house number 332[7].

16. She denied having a tumultuous relationship with her father in law or ever harassing the claimant, and avers they shared a good relationship despite the claimant's attempts to sever communication between the parties by preventing them from visiting him when he was ill. Due to this, they were only able to see him and care for him whilst he was warded at the San Fernando General Hospital.

17. The defendant has counterclaimed for the following;

    i. *A declaration that the defendant is entitled to ownership and possession of house number 332 and the lands upon which it stands; and*

    ii. *An injunction restraining the claimant whether by himself and/or his servants, agents, employees or howsoever otherwise from in any way hindering the use of the subject property by the said defendant.*

Issues

18. Although the claimant has treated with the issue of coercion and undue influence in his submissions it is clear that the defendant has abandoned those issues or has at the lowest, chosen not to pursue them in her submissions. To this end she has indicated that in her view the dispute lies solely within the realm of promissory estoppel. The issues to be determined by the court therefore are;

[7] See paragraphs 18.a-18-d of the Defence.

i. *Does the defendant have an equitable interest in the property as a consequence of the doctrine of promissory estoppel?*

ii. *Should the court find in favour of the defendant on the issue of promissory estoppel, what is the extent of her interest?*

Evidence for the claimant

19. The claimant has given evidence for himself and has called upon one witness, Dave Maharaj to give evidence on his behalf.

Anthony Cudjoe

20. Anthony is the elder brother of Alvin (deceased). Alvin was born on February 17, 1964 and Anthony on May 27, 1962. There are currently three (3) structures on the property. The first house; a 20-foot by 26-foot structure, consisting of three (3) bedrooms built on wooden posts which was built in or around 1973 was originally occupied by the claimant and Alvin during a period of their childhood. The claimant may have been back and forth between this first house and his mother's property, but he always maintained a room in this first house. The claimant moved out of this house eventually, but Alvin continued to live in same up until his death in 2017 and when he got married to the defendant in 2001, the defendant moved into that house also. The defendant continues to live there to this date based on the permission of the claimant.

21. Moses did renovations on the first house with the help of someone by the name of Raymond and some of his relatives. Alvin did not contribute financially or otherwise towards the renovations of this

house as he was also in school and not yet employed when it was being built. He maintains that Alvin did not contribute to the construction or met any expenditure for maintaining house number 332.

22. When Alvin got married to the defendant, the living situation became unbearable as they both harassed and tried to intimidate Moses. The police had intervened in these disputes on several occasions to quell the situation. Unprepared to continue living with the harassment from the pair, the claimant filed domestic violence proceedings against them and he obtained a protection order restraining the couple from engaging in certain behaviours[8].

23. Although Alvin died in 2017, the defendant continued to harass the claimant and his family, unable to tolerate it anymore, he filed possession proceedings in the Magistrate's Court against her which have now been stayed as she has claimed to have an equitable interest in the property.

24. The second house was built by Moses in an unknown year after he sold the property he owned on the adjoining lot of land ("Lot 332 Boodoosingh Drive") to prepare for his arrival on the now disputed land. The claimant and his wife currently live in this second house.

25. The third structure, which is a 12-foot by 12-foot flat annex was built by the claimant and Alvin in an unknown year to assist the father who began having mobility issues. Moses lived in this flat annex up until his death on February 7, 2003. The claimant also moved into this structure around the time the defendant had moved in with Alvin, so he could care for his father who was now suffering from various ailments that more or less confined him to the house. This third structure is the subject of this claim.

[8] TB 2, PDF 23 namely Protection order or interim order

Cross-examination

26. House number 332 was built by Moses for the claimant and Alvin. Neither Alvin nor the claimant helped build this house as they were both of school age. The contributions they made were minimal such as to pass tools whilst the construction was ongoing. Alvin had also lived in this house with a partner from a previous relationship. The claimant never raised any issues with Alvin nor his partner about their occupation of the house.

27. Later on, in the cross-examination, when counsel asked if the property that the defendant currently resides in was built for the benefit of Alvin, he responded that it was not, nor was the property with the annex attached built for his benefit. His father made no mention that the properties were to be divided between him and his brother. The house in which the claimant currently lives, was constructed in 1974. House number 332, which is slightly older may have been constructed a year or two before this second house was built.

28. The claimant returned to live on the disputed land in or around the early 1980s and he did not immediately live in the second house but had built a small shed on the driveway path to live in.

29. The claimant agreed that he never gave consent in any form for either the defendant or his brother to continue living on the property as the property had belonged to his father at the time. Due to the fact that he was back and forth he also could not say if his father had spoken to Alvin and informed or promised him that the house was Alvin's own.

30. He accepted that the conveyance was for the sum of one hundred and fifty thousand dollars ($150,000.00), but Moses had also owed him seventy-five thousand dollars ($75,000.00). Whether he paid the

balance owing to Moses in the sum of seventy-five thousand dollars ($75,000.00) is unclear. The evidence is as follows[9];

> *Q …When you bought this property, how much did you pay your father for it*
> *A; I didn't -- my father had -- he had about $75,000.00 he had borrowed from me previously.*
> *Q Uh-huh (affirmative).*
> *A So he took that as the payment.*
> *Q He took that as payment.*
> *A So I gave him after the $75,000.00.*
> *Q Did you say that anywhere in your documents before this Court? You remember putting that in your documents?*
> *A No.*
> *Q All right. You've seen the Deed for this property; right?*
> *A Yes.*
> *Q Transferring from your father to you.*
> *A Yes, I did.*
> *Q All right. Do you accept that on the document it says that you paid the sum of $150,000.00 for this property?*
> *A Yes, I do.*
> *Q You didn't really pay that sum?*
> *A No.*

31. The claimant could not recall with certainty when the defendant began living in the disputed property, but he recalls she began living there whilst he was there full-time. When asked if he could recall whether or not she began living on same in 1998, he was unsure if this was true or not. He said prior to his brother and the defendant getting married

[9] See transcript page 12 and 13 lines 37 to 50 and 1 to 7.

in 2001, she was usually back and forth in the disputed property. It was only after they got married, she began living on the land permanently.

32. From 1998 onwards, the claimant agreed that repairs were done to the property, and family gatherings were held by the couple. They treated the home as if it was their own. No one objected to the couple being there. The claimant however did say that he told his brother he had to move and that is why he allowed him to do the renovations. Although his brother responded that he was going to move, this future move was always a source of contention.

33. He later went on to testify that he did object to them doing work on the property but only after his father died. Whilst his father was alive, he did not say anything. He also stated that the Moses objected to Alvin doing work on the property but could not say how long before he died Moses began to object. When Counsel put to him that the reason he raised no objections was due to the fact that the house belonged to Alvin and the defendant, based on the promise that the father made, he denied this.

34. Alvin started to harass the father maybe a year or two before his death in 2003. Although the noise levels and the disrespect from the pair continued to affect the relationship with the father, neither the claimant nor the father took any legal action against Alvin or the defendant whilst the father was alive. It was only after he died in 2003, that the claimant brought the domestic violence proceedings against them as the harassment began to be overbearing. Prior to this, the claimant preferred to settle the matter as a family rather than bring proceedings against his brother. When counsel suggested to him that the reason, he never took the pair to court prior to the father's passing was due to no 'bad blood' between the parties he denied this.

Dave Maharaj

35. Maharaj is an Attorney at Law admitted to the Bar in the year 2000. This witness did not appear for cross-examination. In the circumstances the veracity and reliability of his evidence remains untested. In so far therefore as the issue of capacity is concerned the absence of Mr. Maharaj would have affected the case for the claimant on that issue. However, capacity and influence are no longer issues for this court so that his absence is not material at this stage. His evidence in chief on the issue is equally of no relevance and will not be considered.

Evidence for the defendant

36. The defendant gave evidence for herself and called one other witness, Raymond Bertrand ("Raymond").

Raymond Bertrand

37. Raymond, a building contractor, is familiar with the subject property having lived there with his family from around 1975 or 1976 until 1986. His mother, Ruby Lopez was in a live-in relationship with Moses during this period. He initially lived on lot 332 Boodoosingh Drive which was comprised of a two-storey property. Alvin had come to live in the downstairs apartment whilst Raymond's family and Moses lived in the upstairs part.

38. Prior to selling lot 332 Boodoosingh Drive, around the years 1978 to 1980, Moses built two (2) houses on the subject land with the assistance of Alvin and Raymond. The claimant at this time lived with his mother in Mon Repos.

39. Raymond's mother and siblings moved into one of the houses built on the subject lands and Alvin moved into the other house (where the defendant currently resides) after the sale of lot 332 Boodoosingh Drive was completed. The claimant did not come to reside on the subject property until a long while after as he had always lived with his mother and sister in Mon Repos. When he finally came to take up residence on the lands, he built his own house in the driveway, next to a drain on the southern side of the property.

40. In 1986, Raymond and his family moved out of the subject land. When the Bertrand family left, Moses remained in the house previously shared with them, the claimant was still living in the driveway property and Alvin was living in the same house currently occupied by the defendant.

41. From Raymond's observations, having remained close with the family over the years, Alvin had a close relationship with Moses whilst the claimant only appeared when he built his house on the driveway.

Cross-examination

42. It was suggested to him that during the above period, a house was in existence on the subject lands. He agreed but said that the house on the subject lands was the claimant's grandfather's house and not the house the defendant currently lives in.

43. When asked about the capacity in which he assisted in building both houses, he said he had done woodwork in school, so he did not mind helping with hand pieces of wood, nailing etc. The house the defendant currently lives was built before 1983 but the witness did not indicate an exact date.

Marguerite Cudjoe

44. When the defendant first met her husband in November 1997, she was living in Chaguanas. In 1998 her son was preparing to write the common entrance exam and Alvin invited her son to live with him during this time as his home was closer to the school. Her son moved in with Alvin and the defendant would often visit. After a medical procedure in 1998 or 1999, it was difficult for her to commute between Alvin's home and her home in Chaguanas, so based on his invitation, she began to live with Alvin permanently. At this time, the claimant did not reside permanently at the property.

45. She and her husband contributed to maintaining the house by paying for the repairs needed, painting, and cleaning the house based on the express representation from Moses that house number 332 would be hers and Alvin's and they could not be evicted. It is her evidence at paragraph 6 of her witness statement as follows;

> *"I would put whatever little money towards running the household and cleaning painting assisting with any minor repairs and with household expenses. Such act was based upon the expressed representation of Moses Alexander Cudjoe in the defendant's presence that house no. 332 would be my husband's and mine and no one would ever be able to put them off the land."*

46. The couple undertook to change the flooring in 2001 in preparation for their 2002 wedding. In 2014, they undertook major changes to the property such as changing a partition wall and roofing works. They were able to 'pool' whatever resources they had to facilitate the above, as they both worked. Her husband had worked a number of places including "Acadian Firtrin Damus", on industrial plants and at

the Point Lisas Estate, she herself had worked at KFC along with taking upholstery and sewing jobs. When her husband died, she continued the improvements on her own.

47. At no point in time was she or her husband aware that Moses transferred the land to the claimant. There was 'bad blood' between the siblings but there was not a strained relationship between she, her husband and father in law.

48. There have been a number of court matters between the claimant and her husband, one such matter stemming from the ownership of this property. She admits to not being present at the hearing but was told by her husband that the Magistrate informed the claimant that he could either pay Alvin for the house or initiate a claim in the High Court. There is also an eviction proceeding in the Magistrate's Court over the same property.

49. She has deposed in paragraphs 28 a -28 d of her witness statement the ways in which the claimant has tried to intimidate her by restricting her access to her home and making it uncomfortable to live in the house.

Cross-examination

50. Alvin had commissioned a valuation report when the matter was at the Magistrate's Court in 2006 which would have taken into account the flooring they changed in anticipation for their 2002 wedding. That valuation is exhibited to the claimant's evidence and shows improvements to the tune of $42,000.00. It is also exhibited to the defendant's witness statement. Further it is an agreed document set out in the list of agreed documents. She also agreed that she attended a few of these proceedings but denies knowing that the claimant was

the owner of the property. She also denied the claimant sent her or Alvin a letter indicating he was the owner. She only knew of the court summons for Alvin to attend court.

51. Further into the cross-examination, she admitted that she knew that the claimant was the owner of the property as he brought the proceedings against Alvin in or around 2004. However, she testified to have still been unsure even after those proceedings, as the claimant did not show her any documents regarding his ownership. It is only when she commissioned a search after the claimant sent her the Notice to Quit in 2018, she was sure that claimant was the owner.

52. She testified that although her father in law promised the property to her and Alvin, he instead transferred it to the claimant, however this transfer was not as a result of the strained relationship between Alvin and Moses. She also testified that Moses had told Alvin to get the money to do the Deed, however she went on to say that this topic of conversation caused many problems.

53. During the time she has lived on the land, there has been no altercation between her, her late husband and her father in law. It was only after the death of her husband, the claimant began calling the police to the residence.

54. She testified that she and her husband did many renovations based on their interest in the property. She testified when the claimant served her the Notice to Quit, she told him to "give me something so I could help myself forward..."[10]

[10] Transcript dated December 2, 2022, page 38 lines 47-48

The Court's Approach

55. In ***Horace Reid v Dowling Charles and Percival Bain***[11], Lord Ackner in delivering the judgement of the Board stated that where there is an acute conflict of evidence, the trial judge must check the impression that the evidence of the witnesses makes upon him against;

    i. *Contemporaneous documents;*
    ii. *The pleaded case; and*
    iii. *The inherent probability or improbability of the rival contentions*

Promissory estoppel and Proprietary estoppel

56. The learned authors of ***Halsbury's Laws of England*** provides the following in relation to promissory estoppel.

> *"The principle of promissory estoppel is that, when one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but must accept their legal relations subject to the qualification which he himself has so introduced*. [12]"

[11] [1989] UKPC 24

[12] Halsbury's Laws of England, Estoppel (Volume 47 (2014)), Nature, Classification and Principles of Estoppel, para. 308

Promise

57. In ***Fulchan v Fulchan***[13], Rajkumar J, as he then was, defined promissory estoppel as follows;

> *"11. Promissory Estoppel Where by his words or conduct one party to a transaction freely makes to the other a clear and unequivocal promise or assurance which is intended to affect legal relations between them (whether contractual or otherwise) or was reasonably understood by the other party to have that effect, and, before it is withdrawn, the other party acts upon it, altering his or her position so that it would be inequitable to permit the first party to withdraw the promise, the party making the promise or assurance will not be permitted to act inconsistently with it. "*

58. In the Court of Appeal decision of ***Mills v Roberts***[14], a distinction in the nature of the promise between the law of promissory estoppel and proprietary estoppel was considered. Jamadar J.A. stated;

> *"19. ...Whereas in promissory estoppel there must be a clear and unequivocal promise or assurance intended to effect legal relations or reasonably capable of being understood to have that effect, in the law of proprietary estoppel there is no absolute requirement for any findings of a promise or of any intentionality."*

There must be a representation made by the claimant/agent/predecessor in title that the defendant would obtain an interest in the property. This

[13] CV2010-03575
[14] Civil Appeal No. T 243 of 2012

representation could be made by words or conduct of the representor, there could also be a passive encouraging of the belief through silence.

Expectation or belief

59. In ***Juramanie Gayapersad v Danraj Gayapersad***[15] Rajkumar J, as he then was, opined;

> *"75. It is not necessary for the claimant to prove that the defendant agreed that the promise or assurance would be irrevocable since it is the claimant's detriment which makes the assurance binding and irrevocable provided that it was clearly intended to be acted upon. See Snell's Principles of Equity 31st Ed. Paragraph 10-17.*
>
> *76. 2. Expectation or Belief*
> *She must have acted in the belief either that she already owned sufficient interest in the property to justify the expenditure or that she would obtain such interest. See Snell's Principles of Equity 31st Ed. Para. 10-18."*

Detriment

60. In assessing the detriment allegedly suffered by the claimant, the court would consider any benefit and/or advantages enjoyed by the claimant from the subject property. In ***Fulchan, supra*** at p. 7;

> *"The law as set out in Snell's Equity (ibid) is clear. It will recognize such an interest in circumstances where a party*

[15] CV2012-00164

asserting such interest was led to act to his detriment, and it would be inequitable not to recognize such an interest."

61. Further at paragraph 17, the Honourable Judge noted that not every contribution made to a property would give rise to an equitable interest.

> *"Routine maintenance activities on property that is occupied by such a claimant, such as cleaning or painting, would not usually fall into the category* of detrimental actions that require compensation by the award and *recognition of an equitable interest in property. This is activity to be expected of anyone who occupies and has the benefit of occupying property."*

There is one major distinction between promissory and proprietary estoppel, namely that the latter treats with a promise to an enforceable right in land. The applicable principles of law remain the same for both. However, it is also to be noted that acquiescence or non-objection may qualify as a promise in appropriate circumstances. The case for the defendant appears to fall within both.

Does the defendant have an equitable interest in the property

<u>Promise or representation or assurance</u>

62. It is the claimant's argument if the defendant sought to raise the point that his father had made representations to her in the past that the house belonged to her, she ought to have had the estate of the father made a party to the action. The claimant cannot in anyway be bound by what was said between his father and the defendant. The court does not accept this argument as legal title is vested in the claimant. Should Moses have promised the property to the Alvin and the

defendant, and the doctrine of promissory estoppel is found to apply, it follows that Moses could not have transferred that which he did not have.

63. The claimant further submitted that any representations made, as evidenced in the pleadings of the defendant were spoken to Alvin in the presence of the defendant and as such the promise was made to him (Alvin) solely. The defendant has not applied for the estate of her deceased husband and as such she cannot maintain a counterclaim on the principles of equity. In this regard, the resolution of this issue is dependent on the finding of the court on the issue of whether a promise was in fact made. If the court finds that a promise was not made, then the defendant has no ground whatsoever upon which to stand in so far as promissory estoppel is concerned. If the court finds that a promise was in fact made to Alvin that the property would belong to him then the defendant having not sued in the capacity of his LPR would be only entitled as one of the beneficiaries it being pleaded at paragraph 5 of the Statement of Case that Alvin also had two children in Tobago. However she cannot and has not sued as a beneficiary of the estate of Alvin.

64. She has sued in her personal capacity. This means that she must demonstrate that the promise was made not only to Alvin but also to her. If the court finds that the promise was also made to her that she would also be owner of the property, then that is the limited capacity in which she would be successful.

65. The claimant has also submitted that in regard to the evidence of what is said or done by a deceased person, the court ought to examine same with a greater level of scrutiny. He has relied on the case of ***Harold***

Stauble v Dulcie Bholai[16] where the plaintiff sued the defendant in her capacity as executrix of the estate of the deceased for specific performance of an oral contract made between the deceased and the plaintiff for the purchase of a parcel of land. It was the plaintiff's case that the agreement contained an option to purchase the property during the lease agreement. The defendant contended that only a yearly tenancy was granted and there was no oral lease for fifteen (15) years with the option to purchase, Ibrahim J at page 4, paragraph 2 of the judgement stated that *"the evidence in support thereof should be examined with a greater degree of scrutiny than would normally be applied when all the parties to a transaction are alive and able to testify".*

The evidence

66. The evidence upon which the defendant relies is two-fold. The first is her husband's statement to her that Moses promised him (Alvin) that the house was for both of them. The second is conversations in her presence in which Moses is alleged to have said the same thing. The difficulty with this is that these occasions have not been defined. The court has not been told of the dates and times of these promises or representations. Further there simply is no evidence of precisely what words were used in making the promise except that no one would be able to put them out. However, the evidence shows that if there were conversations between Moses and Alvin and the defendant these conversations were not had in the presence of the claimant so that he is not in a position to deny them. That by itself does not mean necessarily that the conversations did in fact take place. In law, however, there is no evidence to contradict the fact of those conversations directly.

[16] H.C.A No. 803 of 1976

67. The surrounding evidence however has the potential to contradict the existence of those conversations as a matter of inference. Those surrounding circumstances are;

    a. The fact of transfer to the claimant after the promise was allegedly made to both Alvin and the defendant. This appears to be inconsistent with the intention to give the house to them in the first place. It is the claimant's evidence that the defendant began residing at the house in 2001. The defendant says she started to live there between 1998 or 1999. The property was transferred on December 27, 2002. It means that at the highest on the case for the defendant she was living at the house some two (2) to three (3) years before the transfer.

    b. The evidence that Alvin's relationship with Moses became strained and the harassment by Alvin during the time that Moses became ill. That was maybe a year (1) or two (2) years before he died. It would mean that such a promise if made would have been made between 1999 and 2001 as it unlikely that he would make such a promise after the relationship became strained.

68. The court is of the view and finds that when all of the circumstances are considered, the evidence of the defendant is very poor and highly unsatisfactory. It is more likely than not that Moses did not make a promise to Alvin and the defendant that the house was their own during his lifetime and the court so finds.

69. The other aspect of estoppel is whether Moses encouraged the defendant to act to her detriment when he failed to remove her during his lifetime, if he did then she may be entitled to equitable relief. This

assertion is based on the case of ***Holiday Inns Inc v Broadhead; Holiday Inns Inc v Yorkstone Properties (Harlington)***[17]. The parties in ***Holiday Inns Inc (supra)*** negotiated for a lease but did not sign a contract. The plaintiff had expended considerable sums of money to obtain planning permissions under the assumption that the lease agreement would be honoured. The plaintiff claimed that Mr Broadhead (the defendant) assured him that he would stand by his word with regards to the agreement and reneging on same was unconscionable which entitled him to relief in equity. Goff J, in delivering the judgement, reiterated that *"the authorities clearly establish that there is a head of equity under which relief will be given where the owner of a property seeks to take unconscionable advantage of another by allowing or encouraging him to spend money, whether or not on the owner's property, in the belief, known to the owner, that the person expending the money will enjoy some right or benefit over the owner's property, which the owner then denies him."*

70. This is where in the court's view the fulcrum of the case for the defendant lies. It is clear to the court that the defendant did not act on the mistaken belief that the house belonged to her and Alvin prior to the death of Moses. The evidence is that she expended money to fix the floors only. That sum has not been quantified. It is equally clear that this was for the purpose of the wedding and not for any perceived general ownership of the property. Moses therefore held no duty to take any steps to correct any mistaken belief on her part. Therefore, there was no encouragement by Moses to expend money on the house which could be characterized as being encouragement to expend substantial sums.

[17] (1974) 232 EG 951

Detriment

71. The defendant must have incurred expenses that were to her detriment. Although the defendant has exhibited to her witness statement a cheque for the purchase of roofing material in 2015, there has been no other exhibited evidence to support the assertion of her incurring large expenses to her detriment to establish a case in equity prior to the death of Moses except for the change of flooring for the wedding. In that regard, the valuation report done in 2006 states that the figure set out therein included the changing of the flooring for the wedding but it does not give a value of same and the value set out therein includes all other works done after the death of Moses. The couple wed on February 17, 2002. All of the receipts exhibited to her evidence are dated from 2015 to 2020.

72. The claimant has relied on the case of ***Fulchan v Fulchan.*** The claimant in ***Fulchan (supra)*** claimed to have an equitable interest in his family home, where he resided with his siblings and his parents. His claim in estoppel was dismissed as he failed to establish a basis for his claim in the property. At paragraphs 15 through 20, Rajkumar J (as he then was) reiterated the categories of expenses that do not fall within the ambit of giving rise to an equitable interest. Utility payments, land and building tax payments, purchasing of furnishings and routine maintenance of the home do not give rise to an equitable interest in the property. As such, whatever payments were made with regards to the property, according to the claimant does not equate to an equitable interest.

73. The finding of the court is therefore that the defendant did not acquire an equity by the time Moses died and so the issue becomes one of whether since his death she has acquired an equity against the interest of the claimant. The evidence is that the claimant caused a letter to be

sent by Mr Maharaj after the deed was registered. That letter was sent to Alvin, addressed to him, but the copy exhibited in this case is undated and unsigned. However, it is an agreed document. The defendant made no mention of the letter in her witness statement. There is no evidence that the undated letter was sent to the defendant. Indeed, it was not addressed to her. In cross-examination she admitted that eviction proceedings had been started by the claimant against Alvin and at that time she realized that the claimant was the owner of the property. No date has been given in evidence for those proceedings but the valuation report was done for the purpose of those proceedings in May 2006 so the only inference is that the proceedings may have been instituted sometime before.

74. It must mean therefore that after Moses died in 2003, certainly by the time the eviction proceedings were begun, the defendant would have known that the claimant was exercising rights of ownership over the property. She at first attempted to give a different impression in her evidence in chief that she only knew this after the Notice to Quit was sent directly to her in 2018. This however proved not to be the case as was shown in cross-examination. It follows therefore that the defendant could not have been acting under the mistaken belief that she was the owner certainly during the lifetime of Moses and after he died when the claimant became the paper title owner. To that end, it is also clear that there was no encouragement by the claimant and the court so finds. The counterclaim must therefore fail in its entirety.

75. In relation to the claim, the finding of the court being that there is no issue as to capacity and undue influence, the claimant holds valid paper title and must recover possession. The claimant has not proven specific damages for trespass so that a nominal award will be made. The order of the court is therefore as follows;

a. The counterclaim is dismissed.

b. The defendant shall surrender and deliver up vacant possession to the claimant of lot No. 332A Silk Cotton Road, Battoo Avenue, Marabella, in the Ward of Naparima in the Island of Trinidad comprising **FIVE THOUSAND SIX HUNDRED AND TWENTY (5,620) SQUARE FEET** be the same more or less bounded on the North and partly by Lot No.331, on the South partly by a drain reserve and partly by Lot No. 331, on the East partly by Lot No. 331 and partly by a drain reserve and on the West partly by Lot No. 333 and partly by a drain reserve four feet wide which said parcel of land is shown coloured pink as Lot No. 332A on the plan annexed to Deed No. 3143 of 1973 together with the two wooden dwelling houses thereon and the appurtenances thereto belonging, more particularly described in Deed registered as DE200303278085D001.

c. The defendant shall pay to the claimant nominal damages for trespass in the sum of $5,000.00.

d. The defendant is restrained whether by herself, her servants and/or agents whosoever from entering or remaining upon or interfering with the said property.

e. The defendant shall pay to the claimant the prescribed costs of the claim and counterclaim in the sum of $14,000.00 each amounting in total to $28,000.00.

Ricky Rahim

Judge