

**EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF THE VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

Claim No. BVIHCV2024/0324

BETWEEN:

DAVE NELSON MEYERS

Claimant

and

**LYNETTE SMITH
WILSON MEYERS**

Defendants

Appearances: Ms. Marie Lou Creque, Counsel for the Claimant
Mr. Stephen Daniels, Counsel for the Defendants

2025: July 18th
2025: December 23rd

Written Submissions filed 5th May, 15th May, 1st, 12th, and 16th September, 2025.

JUDGMENT

[1] **ANDERSON J (Ag.):** These are the further reasons for the decision of the Court delivered on December 23, 2025. I have not recited all of the facts, only such as I consider necessary for the purpose.

- [2] In this matter the Claimant sought a declaration that he was the 100% beneficial owner of the second (upper) storey of a dwelling house (the “**second floor**” or the “**apartment**”). The Defendants are the registered proprietors of the parcel on land on which it sits, registered in the book of titles at Registration Section West Central Block 2438B Parcel 28 (the “**property**”). He further asked that the court make an order compelling the Defendants to separate the second floor as a strata lot and to register it in his name. The second storey is currently rented by the Defendants to a third party; and the Claimant also sought various consequential orders such as for an accounting and payment out of the rental income.
- [3] His case was that the house on the property was the colloquially termed “family house” in which all the parties grew up along with other siblings and their parents. As an adult he lived there with his mother and the Second Defendant, but wanted his own space for his own family. He sought permission from his mother to build an upper storey on the existing house and she granted it. He completed the construction in 1995 and lived and raised his family there. His children eventually went away, but he remained. He left the apartment after hurricane Irma damaged it in September, 2017 making it uninhabitable.
- [4] He started its repair, but eventually agreed with his sister - the First Defendant - that she would complete the repairs as he could not afford to do so. They agreed that the space would then be rented out after the repairs were complete and that the rental income would first be used to reimburse the First Defendant, the remaining proceeds thereafter to the Claimant. She paid him rent for a while but then stopped, asserting that the property belonged to her and the Second Defendant, a fact of which he was not previously aware. He has therefore come to this court seeking orders and declarations to resolve the dispute.
- [5] The Defendants’ case was that they are absolute owners with no interest of the Claimant being registered on the land register on the date when they obtained title. They said that in or about the early 1990s, they gave the Claimant oral permission to build a 3-bedroom apartment on the upper floor of their property. They did not agree that he lived continuously at the apartment but also did not assert that anyone other than him was ever in control of it prior to 2017. They said that the 2017

hurricane destroyed the upper floor and the Claimant abandoned the property. They say that the doctrine of force majeure therefore applies to the former arrangement.

- [6] Further, that the Claimant's interest in the upper floor apartment is limited to the physical "residue" of what was left of the upper floor. They assert that it is a matter of quantifying the "unascertained" interest of the Claimant in the residue. They did not dispute that the Claimant was paid rent after the apartment was repaired and occupied by a tenant. They said that the Claimant did not provide any consideration for the repair, which cost around \$75,000.00.
- [7] There were significant areas of agreement and so far as the court is concerned, the issues in contention were really the original basis on which the Claimant came to build and occupy the second-floor apartment; and the terms of the post hurricane agreement. These would determine whether the Claimant could make a case out for the relief that he sought.
- [8] During the course of receiving evidence, the possibility of an entitlement based on succession arose. This was because the immediately preceding legal proprietors of the property were the mother of the parties and a sibling (not a party to this claim) in their capacities as personal representative of the father of the parties. There was no mention of him having a will and the property was said to have gone into foreclosure on account of a mortgage against it not being serviced. The evidence as to how the property moved from the personal representatives to the Defendants came to be somewhat muddled. The extent to which I could make positive findings in this respect was that they treated with the bank, cleared the arrears (at least) and received title.
- [9] I ultimately determined that there was no assistance for the Claimant on this basis because the evidence was insufficient to entitle the court to draw any inference other than in favour of the Defendants. Moreover, section 38(2) of the Registered Land Act (**RLA**) provides that where a proprietor is a trustee, no disposition to a bona fide purchaser for valuable consideration is defeasible by reason of the fact of the disposition amounting to a breach of trust. On this issue, they are the registered proprietors of the property and are entitled to the protection of section 23 RLA which grants them absolute legal ownership.

- [10] The Defendants' claim that the hurricane was a force majeure event that terminated mutual rights and obligations was not sustainable. I did not find any support for a finding that the Claimant's initial construction and occupation of the second floor was pursuant to a contractual-type arrangement. On the Defendants' case, they gave the Claimant permission and did not assert that this permission had any timeline. An indeterminate period militates against a contractual arrangement in my respectful view. Even if I could impute a licence to occupy, in these circumstances I would not have found on a balance of probabilities that there was a licence revocable at will in the manner suggested. Accordingly, I found that there was no contractual relationship between the parties as it relates to the Claimant's construction and entry into the property and so the doctrine of force majeure did not apply. Also, based on the existence of the post hurricane agreement, I did not find that abandonment arose either.
- [11] As to the nature of the interest granted, I did not find the various authorities provided regarding common intention constructive trusts helpful as these related to joint acquisition of property. I preferred the argument based in proprietary estoppel as the elements based on promise, reliance and detriment were all present. The Claimant relied on the case of **Jada Hopkins v Alitha Adams**¹ out of this jurisdiction, which supported this approach and this is the context in which I further reviewed the evidence.
- [12] The evidence on behalf of the Claimant had less inconsistencies than the evidence of the Defendants. For example, the Defendants claimed that their mother could not have given permission to the Claimant to build and occupy the additional storey because she suffered from Alzheimer's disease. Both sides eventually agreed in fact, that she had Alzheimer's and both parties referenced the 1990s, but there was no specificity as to when this developed or how it progressed. To my mind, the Defendants were more at risk in this respect, as they asserted in oral evidence that their mother signed papers to transfer the legal ownership of the property to them. A lack of capacity to transfer the property would be a fundamental basis on which legal title could be removed from the Defendants.

¹ Claim No. BVIHCV 2022/0296

- [13] I also found it challenging to reconcile the First Defendant's evidence that both Defendants always let their several siblings know that they owned the property outright, with also claiming that they would always "keep the family in the loop" and "always inform them" about goings-on at the property. If they were outright owners and this was no longer a family home, this course does not seem plausible. It seems more likely to me that their siblings were of the view that the property was still held by their mother and therefore that they all retained some interest in it. The First and Second Defendants also gave conflicting evidence as to whether the property was insured before or after the 2017 hurricane damage. It was apparent that the First Defendant (sister) was the person who treated with the Claimant. I did not find the Second Defendant's evidence in general to assist their case, being vague and sometimes contradictory.
- [14] None of the Claimant's witnesses could speak directly to the agreements between the parties, but all spoke of his control of the premises over different time frames. His daughter gave evidence of growing up in the apartment with her uncle (the Second Defendant) living downstairs and of her aunt (the First Defendant) being concerned to recoup the monies that she spent helping the Claimant to repair the premises.
- [15] I preferred the Claimant's evidence that permission to build the additional floor was granted by his mother and I therefore so found. If it were taken that he effectively took occupation from the time that construction started, he would more likely than not have been in occupation when the Defendants obtained title. Therefore their title would be subject to an overriding interest by virtue of his occupation pursuant to section 28(g) RLA. He could then rely on a legal right conferred by the RLA as opposed to a beneficial entitlement, although estoppel would still have been made out in the alternative.
- [16] If I were wrong and it is the Defendants who gave permission, then the overriding interest falls away but they are still subject to estoppel. This is so because no party disagreed that the Claimant expended his own funds for the construction; had his own access by external stairs; lived in the building for over a period of 20 years and raised his family there; that the Defendants did not impede or interfere with him even when his children moved away; and that they claimed no rent or imposed any condition at all for living there. By their conduct, the Defendants have therefore reinforced a

conclusion that the Claimant had, that he was entitled to and did consider himself as having an entitlement to that part of the property which he occupied. His detriment was in first using his own means to build the second floor and then in remaining there until forced to leave by the circumstances of the hurricane. These were all done in reliance on the expectation that he could live there. The First Defendant further admitted paying monies to him for occupation of the property by tenants after the hurricane – rather than paying him for the “unascertained interest” that they claim, this seems to me to be consistent with an acknowledgment of his entitlement to rent received from the property even when he was not himself in occupation.

- [17] The court parted with the Claimant however, on the extent of the promise and by extension the type of interest that he can claim in it. On a reading of the evidence, I could not find where he asserted that any promise of outright or unequivocal ownership was given to him. Viewed alongside all of the evidence, I find that the promise that was implicit in the permission was that he could build a home on the family property and that he could live there. The promise was in relation to the space that he built and not in relation to the entire property, which comprises both the land and building in accordance with section 2 RLA. Given what I have set out in the preceding paragraph, it was my further respectful view that his entitlement was not constrained by any particular event occurring in his lifetime. However, he is not entitled to separate the land as claimed.
- [18] I considered it unconscionable that the Defendants should claim that the Claimant had no entitlement to the second floor apartment simply because it was damaged (not destroyed) and that there was possibly a disproportionate effort put into its repair after 2017. In coming to this conclusion, I also took into account the fact that the First Defendant would by now have been reimbursed in full as well as the concessions in oral evidence by the Second Defendant that his brother did have some recognizable entitlement.
- [19] I found it appropriate that the Claimant should maintain a right of occupation and income from the second floor for the remainder of his life. Consequential orders followed based on his entitlement to rent and the desire for the parties to continue with some semblance of order as it relates to practical management of the property.

[20] The orders of the court were therefore as follows:-

1. The Claimant is entitled to a right to occupy for life, the separate living space built by him as a second storey to the dwelling house on property registered in the name of the Defendants and recorded in the BVI register of titles as West Central Registration Section Block 2438B Parcel 28 (referred to hereafter as the “premises”).
2. Should the Claimant choose to continue to remain out of occupation of the premises, he shall be entitled to income earned from its rental for the remainder of his life.
3. Should the parties agree that the Defendants or either of them continue to rent the premises on behalf of the Claimant, then the rental income is subject to reasonable deductions for any maintenance of the premises; for insurance of the dwelling house (prorated accordingly); and any other deductions agreed by the parties in writing.
4. Should the Claimant assume responsibility for the rental as he is entitled to do, he shall still be under an obligation to contribute to the cost of insurance for the dwelling house (prorated accordingly).
5. The Claimant is under an obligation to maintain the internal and external structure of the premises to a standard consistent with the state of the rest of the property.
6. The Defendants are to provide the Claimant with an account of all rent collected from the premises from October, 2023 to the present time, as well as all deductions from such collections, including for insurance and maintenance and shall provide documentary evidence to support same. Such account is to be provided within 60 days of the date of this order.

7. Costs are awarded to the Claimant on a prescribed basis, based on the value of \$75,000.00.
 8. Costs of the adjourned hearing of July 15 are awarded to the Claimant in the amount of \$400.00.
- [21] The court will draw up the formal order.

Akilah Anderson
High Court Judge (Ag.)



By the Court

Registrar