

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

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

CLAIM NO: AXAHCV2025/0050

BETWEEN:

**[1] RICHELLE ROXANNA ROMNEY
[2] RICARDO RICHARD ROMNEY**

Claimants

and

**[1] BETTY ROMNEY
[2] PEARL ROMNEY
[3] KEITH RALPH CLEMENT ROMNEY
[4] GEM MERLYN ROMNEY
[5] MURLINE ROMNEY**

Defendants

Before: His Lordship, The Honourable Justice Ermin Moise

Appearances:

Mr. Kerith Kentish for the Claimant/Respondent.

Mrs. Tona Simpson-Whyte for the Defendant/Applicant.

2025: December 3
2026: March 18

Decision

- [1] **MOISE, J.:** This is an application to strike out the claim and statement of claim filed on 30th July 2025. The claimants have opposed the application and on 17th November 2025 filed an application of their own seeking leave to amend the statement of claim. Having considered the evidence filed and the submissions of counsel, I have determined that the application to strike out should be dismissed and have made the case management orders outlined in paragraph 38 below in exercise of the court's powers to further the overriding objective.

The Claim

- [2] The claimants are administrators in the estate of the late Richard Romney. The 5th defendant is the mother of the late Richard Romney. The substance of this claim is grounded on the equitable principle of promissory estoppel. In the alternative, the claimants have based their claim on unjust enrichment. Essentially, the claimants assert that the 5th defendant agreed that Richard Romney would finance the demolition of the existing matrimonial home, which she had jointly constructed with her now deceased husband. It is alleged that the 5th defendant also agreed that Richard Romney would also bear the entire cost of constructing and furnishing a new Apartment Complex on the site on which the home was demolished. This complex was to contain 4 separate apartment units. It is pleaded that, in exchange for this, Mr. Romney would receive full use, control and beneficial ownership of three of the four apartment units along with the exclusive right to collect all rental income generated from those units and that the 5th defendant would be entitled to the exclusive use, occupation and beneficial ownership of one of the two-bedroom units (Unit 4).
- [3] It is pleaded that Mr. Romney fulfilled his end of the bargain and met the costs of the construction of the apartment complex. Sometime in the middle of 2017, unit 4 of the complex was complete and the 5th defendant moved in. The remaining 3 units were allegedly completed in September 2017, just prior to the passage of Hurricane Irma. Mr. Romney then repaired damage to the units which was caused as a result of the hurricane. From then on, and until his death, Mr. Romney collected the rent of 3 of the units whilst the 5th defendant occupied one. It is also pleaded that all utility accounts were registered in the name of Richard Romney.
- [4] Mr. Romney, unfortunately, died on 5th June 2023. The claimants plead that, from the point of his death, the 5th defendant began making demands upon the tenants to pay rent directly to her and issued threats of eviction in the event of non-compliance. The claimants assert that these demands are evidence of the 5th defendant's reneging on the oral agreement between herself and Mr. Romney. It is pleaded, further, that the tenants in occupation of the units have ceased paying rent altogether.
- [5] It is pleaded, therefore, that Mr. Romney acted to his detriment in expending sums on the construction of the apartment complex and that he was induced into doing so by the 5th defendant's promise.

[6] The land on which the 5th defendant's matrimonial home was built is a portion of that parcel of land registered in the Land Registry of Anguilla as Registration Section South Central, Block 38409 B, Parcel 60. It is within this context that the claim against the 1st to 4th defendants was filed. The claimants assert in their statement of claim that the 1st to 4th defendants are sued in their capacities as personal representatives of the Estate of Christopher Romney and James Esterlin Romney. Parcel 60 is registered in the names of the 1st to 4th defendants in that capacity. The claimants therefore assert that the 1st to 4th defendants are joined to this claim by virtue of their interest in Parcel 60, part of which forms the subject matter of these proceedings.

[7] It is against this backdrop that the defendants have filed an application to strike out the claim. They assert, among other things, that no promise was made to Mr. Romney by the 1st to 4th defendants and therefore no claim can succeed against them on that premise. Before considering this application in full, it is also important to outline the specific remedies which the claimants seek. The prayer in the statement of claim is as follows:

- (a) a declaration that the defendants hold Units 1, 2 and 3 on trust for the Estate of Richard Romney;
- (b) a declaration that the Estate of Richard Romney has a beneficial interest in the land comprising the footprint and curtilage of the Apartment Complex constructed by the late Richard Romney on a portion of Registration Section South Central, Block 38409 B, Parcel 60 as depicted on the location maps attached to the Statement of Claim as "RR 3";
- (c) an order that the First, Second, Third and Fourth Defendants shall forthwith take all necessary steps to cause the subdivision of Parcel 60 to delineate the area of land on which the said Apartment Complex stands, together with any necessary curtilage;
- (d) an order that upon completion of the subdivision, the First, Second, Third and Fourth Defendants shall immediately cause title to the newly created parcel for the said Apartment Complex and curtilage thereof to be transferred as follows: Three-quarter ($\frac{3}{4}$) undivided share

to the Estate of Richard Romney; and One-quarter ($\frac{1}{4}$) undivided share to Murline Romney, the Fifth Defendant.

- (e) in the event the First, Second, Third and Fourth Defendants fail to comply with paragraphs 3 and 4 of this Order within thirty [30] days of the date hereof, the Claimants shall be entitled to execute and submit an application to the relevant department of the Government of Anguilla for the subdivision of Parcel 60, in accordance with the terms of this Order, without the need for the signatures of the First, Second, Third and Fourth Defendants, being the registered proprietors of Parcel 60.
- (f) In the event that the First, Second, Third and Fourth Defendants fail to comply with paragraphs 3 and 4 this Order within thirty [30] days of the date hereof, the Claimants are empowered to take any step and execute any document necessary to give effect to the terms of this Order as if they were the Registered Proprietors of Parcel 60.
- (g) an order that the Fifth Defendant, whether by herself or anyone acting on her instruction, is hereby restrained and prohibited from:
 - (1) making any demand for rent from the tenants of Unit 1, Unit 2, or Unit 3 of the said Apartment Complex;
 - (2) exercising any rights of ownership or control over Unit 1, Unit 2, or Unit 3 of the Apartment Complex;
 - (3) interfering in any manner whatsoever with the tenants' quiet enjoyment and lawful occupation of Unit 1, Unit 2, or Unit 3 of the Apartment Complex.
- (h) costs to the Claimants.
- (i) such further and/or other relief as this Honourable Court deems just.

The Application to Strike Out

- [8] The application to strike out the statement of claim is made pursuant to CPR 26.3 (1) (b) which states that “...**the court may strike out a statement of case or part of a statement of case if it appears**

to court that – (b) the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim.”

- [9] Counsel for the applicant submits that the proper approach in addressing an application for an order striking out a statement of case is for the court to confine itself to the pleadings and assume all the facts pleaded in the statement of case to be true. If the Court finds that the pleadings are untenable as a matter of law, a party may have his/her claim or defence struck out without prejudice, of course, to remedying the defects and further bringing properly constituted legal proceedings. For that proposition, counsel relies on the decision of *Didier and Ors v Royal Caribbean Cruises Ltd.*¹ where Pereira CJ stated the following in paragraphs 28:

“Therefore, for the strike out procedure, the pleadings alone are examined and if the court finds that they are untenable as a matter of law a party may have his/her claim or defence struck out. This does not preclude that party however, from remedying the faults of their claim or defence and bringing further legal proceedings in relation to the same dispute. They are perfectly entitled to do so. The situation is different, however, with the summary judgment procedure since this procedure gives a judgment on the merits which operates as issue estoppel. No further litigation on the same issue(s) will be entertained by the court.”

- [10] The applicants assert that a claim of proprietary estoppel requires some promise, representation, or assurance by the landowner, or someone who has proprietary interest in the property, which is capable of giving rise to an expectation that is not speculative, that the landowner or person with proprietary interest will not insist on their strict rights. There must be reliance on the representation and a change of position by the person claiming the equity. In this regard, it is also asserted that the claim for constructive and resulting trusts is no different.
- [11] In submissions filed in support of the application, counsel for the applicants refer to **Halsbury’s Laws of England**², where the “traditional formulation” of proprietary estoppel was described as follows:

¹ (2016) 89 WIR 277 (ECCA)

² Volume 47(2021) at para. 392

“The traditional formulation [of proprietary estoppel] was based on the principle that, where the owner of land (A) knowingly allowed his rights to be infringed by another (B) who expended money on the land in the mistaken belief that it belonged to B, A could not afterwards be allowed to assert his own title to the land. From this formulation a five-fold test, referred to as 'the five probanda', developed, under which the following circumstances had to be present in order that an estoppel might be raised against A:

- (1) B must be mistaken as to his own legal rights; if he is aware that he is infringing the rights of another, he takes the risk of those rights being asserted;
- (2) B must expend money, or do some act, on the faith of his mistaken belief; otherwise, he does not suffer by A's subsequent assertion of his rights;
- (3) acquiescence is founded on conduct with knowledge of one's legal rights, and hence A must know of his own rights;
- (4) A must know of B's mistaken belief; with that knowledge it is inequitable for him to keep silence and allow B to proceed on his mistake;
- (5) A must encourage B in his expenditure of money or other act, either directly or by abstaining from asserting his legal right.”

[12] Counsel refers to **The Registered Land Act**³ which defines “proprietor” as the person registered under the Act as the owner of land or a lease or a charge. Therefore, it is argued that a person is not considered a proprietor of land until the legal estate is vested in them. That, it is submitted, is the case even if they have equitable rights. Unless the legal estate has been vested no proprietary rights exist. Counsel contends that whilst the term legal estate in property is not expressly defined by the **Registered Land Act**, it is a rule of English land law that “The only estates in land which are capable

³ R.S.A. c. R30

of subsisting or being conveyed or created by law are an estate in fee simple absolute in possession; and a term of years absolute”.

- [13] However, I observe that the submissions in relation to proprietorship are somewhat oversimplified; especially when considering the specific pleadings in the present case. Firstly, it is important to give consideration to the definition of land as outlined in the **Interpretation and General Clauses Act**⁴. In that Act, land is described as including “**all tenements or hereditaments, and also all messuages, houses, buildings, or other constructions, whether the property of Her Majesty, Her heirs or successors, or of any corporation, or of any private individual, except where there are words to exclude houses and other buildings.**” Therefore, when one considers land and its ownership in law, one has to give consideration to the legal implications of the buildings which are erected on the land, and by whom.
- [14] The second issue for consideration is contained in section 28(g) of the **Registered Land Act**. The section states that “[u]nless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect it, without their being noted on the register ... the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed”
- [15] It is my view, therefore, that the interest of the registered proprietor can certainly be affected in circumstances where there is a building affixed to the land, given that, in law, this building is deemed to be a part of the land itself. In circumstances where someone other than the registered proprietor, especially the owner of a building, is in actual occupation or in receipt of the rents and profits of the premises, proprietary and other interests do exist and are enforceable in law. I will address the full implications of those issues later on in this judgment. However, it would suffice to state that, at this stage, there appears to me to be a legitimate issue regarding the ownership of a building which is constructed, and therefore forms part of, the land which is the subject of this claim.

⁴ R.S.A. c. 125

- [16] The applicants assert that the property, which is the subject of the claim, is registered in the name of the 1st, 2nd, 3rd and 4th defendants in this cause, who are the personal representatives of the estates of Christopher Romney and James Esterlin Romney, respectively. In light of this, it is asserted that the statement of claim filed by the claimants is devoid of any pleadings of any gift, promise, representation, or assurance by any person other than the 5th defendant. It is noted, however, that the 5th defendant has never been the registered proprietor of the land. Insofar as that is the case, the applicants submit firstly that the 5th defendant had no proprietary interest in the land and therefore can provide no basis upon which a claim for such an estoppel can be grounded.
- [17] Counsel for the applicants submit that a comparative analogy to the facts as pleaded in this case, in determining whether the 5th defendant has any proprietary or beneficial interest in the property is that of the relationship and rights that a purchaser has in respect of property. It is submitted that prior to conveyance, a purchaser has only equitable interest, and where the said purchaser purports to grant rights to the property to a third party, prior to the completion, that third party had only personal rights against the purchaser and not the vendor. Counsel goes on to submit that the equitable rights that the purchaser has in respect of the property only applies as between the parties to the contract, that is to say the vendor and the purchaser, and is derived from the right to have the contract specifically performed according to its terms.
- [18] Counsel also refers to the decision of Harman J in the case of **Coventry Permanent Economic Building Society v Jones**⁵ where the doctrine was described as “**an old doctrine (none the worse for being old) that A purports to create a lease in B’s favour, A having no estate sufficient to support the lease, then if A afterwards acquires sufficient estate, he will not be able to deny that he always had a good right to create the tenancy and the lease is said to take effect by estoppel**”.
- [19] The submission is that neither the lessee nor the lessor can dispute one another’s title and if the lessor without legal estate later acquires one, the estoppel is “fed”. Counsel goes on to state that the above establishes that prior to completion of the conveyance of the legal estate, the interest of the 5th defendant is not sufficient to be considered proprietary, since at the time when the alleged

⁵ [1951] 1 All ER 901

representation/encouragement by the 5th defendant occurred, she had no legal or beneficial interest in Parcel 60. Counsel submits that this is fatal to the claimants' case.

- [20] However, as I have noted earlier, the circumstances of the current case are not inherently analogous to the hypotheticals put forward by counsel. Here, there appears to be a dispute regarding the ownership of the building affixed to the land. It is pleaded that the first building which was destroyed belonged to the 5th defendant and her husband. The second building was constructed on a promise that Mr. Romney would retain an interest in 3 out of the 4 units. In light of that, the claimants seek orders from the court regarding the rights of Mr. Romney's estate to the proceeds of rent from 3 of the units in the apartment complex. These appear to me to be legitimate issues for the court's consideration.

The Response

- [21] Counsel for the claimants submits that the position taken by the applicants is misconceived in law. It is submitted that in fact the very basis for the applicant's submission acknowledges that "*A claim for proprietary estoppel requires some promise, representation, or assurance by the landowner, or someone who has proprietary interest in the property, which is capable of giving rise to an expectation that is not speculative, that the landowner or person with proprietary interest will not insist on their strict rights.*" It is asserted that the 5th defendant has a proprietary interest in Parcel 60 being a life interest under the estate of Edward Romney. For my part, whilst I understand the gist of this submission, I must note that the claimants have not pleaded that the 5th defendant has a life interest in the property.
- [22] However, counsel goes on to submit that an assurance need not come from someone with the ability to convey a fee simple, as submitted by the applicants. It is submitted that long-established authorities confirm that title is not a prerequisite for an assurance capable of grounding proprietary estoppel. Counsel submits that the formal status of the representor's title is not what is essential. What is necessary for the court to consider is whether an assurance was made, whether it induced reliance, and whether it would be unconscionable for the representor (or those claiming through them) to depart from it. Counsel submits that equitable assurances may arise even where the representor's own interest is informal, limited or precarious.

[23] Counsel for the claimants refers to the case of **Re Sharpe (a bankrupt)**⁶ in support of the proposition that an equity can arise even where the representor has only a limited or insecure interest, provided that the assurance is relied upon to the claimant's detriment. The court was also referred to the case of **Re Basham**⁷ and notes counsel's submission that assurances of inheritance or future rights can be actionable though the representor has no present ability to grant the right promised, and equity will still intervene. Counsel submits that **Re Basham** makes it clear that:

- (i) an assurance does not require the representor to hold legal title;
- (ii) it need not concern an existing proprietary right; and
- (iii) it may be general or future-facing, provided that the claimant relied on it to their detriment.

[24] In addition to this, counsel also submits that the 5th defendant has an overriding interest in the property. I have outlined the law in relation to overriding interests earlier in this decision and will assess its relevance to the issues at hand later. Counsel also reminds the court that the claimants have also pleaded unjust enrichment as an alternative to the claim of proprietary estoppel.

The Court's Analysis

[25] It is important to always be reminded of the fact that the court's power to strike out a statement of case is discretionary. In addition to that, it has been well established that the use of this power is a nuclear option in the court's case management arsenal and one which should be exercised sparingly. The Privy Council made this position clear in the case of **Real Time Systems Ltd. v. Renraw Investments Ltd.**⁸ where it was stated that:

"... the court has an express discretion under rule 26.2 whether to strike out (it "may strike out"). It must therefore consider any alternatives, and rule 26.1(1)(w) enables it to "give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective", which is to deal with cases justly. As the

⁶ [1980] 1 ALL ER 198

⁷ [1987] 1 ALL ER 405

⁸ [2014] UKPC 6

*editors of The Caribbean Civil Court Practice (2011) state at Note 23.6, correctly in the Board's view, the court may under this sub-rule make orders of its own initiative. **There is no reason why the court, faced with an application to strike out, should not conclude that the justice of the particular case militates against this nuclear option, and that the appropriate course is to order the claimant to supply further details, or to serve an amended statement of case including such details, within a further specified period.** Having regard to rule 26.6, the court would quite probably also feel it appropriate to specify the consequences (which might include striking out) if the details or amendment were not duly forthcoming within that period."*

[26] In light of the Privy Council's pronouncements, it is also important to place the passage earlier referred to by the applicants in the case of **Didier and Ors v Royal Caribbean Cruises Ltd** into context⁹. The passage referred to by counsel for the applicants seeks to draw a distinction between an order striking out a statement of claim on the one hand and the grant of summary judgment on the other. Where summary judgment is granted an issue estoppel arises and the party against whom the judgment is entered cannot resubmit the claim. Where there is an order striking out, this is granted without prejudice to the claimant or defendant resubmitting his pleadings in proper form and substance. Perreira CJ also noted in that passage that the court "may" strike out a claim within the provisions of Rule 26.2. The case does not stand as authority for the proposition that the court is duty bound to strike out a claim if it is not in the interest of justice to do so. The overriding objective is an important feature in the court's exercise of this discretion.

[27] Perreira CJ also considered the exercise of the court's discretion to strike out a statement of claim in the case of **America 2030 Capital Limited v Sunpower Business Group Pte Ltd**¹⁰ where she noted the following in paragraph 21 of her judgment:

"It is useful to remind ourselves that what was before the learned judge were applications to strike out the claims. He was very much alive to the fact that the power to strike is one of the most powerful weapons in the court's arsenal in managing and

⁹ See paragraph 9 above

¹⁰ SKBHCVP2020/0015

dealing with a case justly in the exercise of the overriding objective. The power has been described by the Privy Council in *Real Time Systems Limited v Renraw Investments Limited et al* as one of the court's nuclear options and thus one to be exercised sparingly and normally as a measure of last resort. The learned judge, from his reasoning, was also alive to the fact that in dealing with an application to strike out a case, he also had open to him the whole plenitude of case management powers on which to draw rather than acceding to this nuclear option."

[28] In light of the authorities outlined above, there are 3 important factors which the court should never lose sight of. These are:

- (a) The strike out of statement of case is not a first, but rather a last resort;
- (b) In considering such an application the court "***must consider any alternatives, and rule 26.1(1)(w) enables it to "give any other direction or make any other order for the purpose of managing the case and furthering the overriding objective".***" A court should therefore be aware of the full plenitude of its case management powers and the question of whether there are alternatives to the nuclear option rather than merely striking out the statement of case; and
- (c) Consideration of the alternatives available to the court is a matter which the court is entitled to raise on its own motion.

[29] In addition to the factors outlined above, I refer to the case of **Citgo Global Custody NV v Y2K Finance Inc**¹¹ where Edwards JA highlighted the following as circumstances in which a party's statement of claim should not be struck out:

"... where the argument involves a substantive point of law which does not admit of a plain and obvious answer; or the law is in a state of development; or where the strength of the case may not be clear because it has not been fully developed ..."

¹¹ BVIHC VAP 2008/022

[30] The principles referred to in the case law above were recently reinforced by the Caribbean Court of Justice in the case of **Harry Panday v Malcolm Panday and Deosaran David**¹². Jamadar J noted that:

“On a first principles basis, anchored in the CPR and the right to a fair hearing (Constitution of the Co-operative Republic of Guyana 1980, arts 40 and 144), cases should wherever possible be determined on their substantive merits as opposed to being dismissed for curable procedural deficiencies which can be remedied on terms that are fair and just, and provided that any such interventions align with the overriding objective.”

[31] The court there went on to note that a 3 stage approach should be taken in addressing this issue. Firstly, the court should **examine the statement of claim and determine the nature of the issues raised on the pleadings and any deficiencies**. In doing so, the court should ask the following questions:

- “(a) Does the statement of claim, if all pleaded facts are proven true, fail to disclose a reasonable *ground* for bringing the claim (a cause of action)?**
- (b) Is the statement of claim frivolous, vexatious or an abuse of process?**
- (c) If the statement of claim identifies a reasonable ground for bringing a claim (a cause of action), does it contain sufficient relevant material facts and/or particulars to fairly enable a defendant to know the case they must meet and for the court to identify the issues in dispute?”**

[32] In the second stage, if the statement of claim is found to be lacking/deficient in stating sufficient relevant material facts and/or particulars but does disclose a reasonable ground for bringing the claim, the court must then conduct a balancing exercise in keeping with the overriding objective of the CPR. This involves consideration of the following:

¹² [2026] CCJ 4 (AJ) GY

“(a) Resources: Is it a more effective use of the court’s and parties’ resources to allow an amendment rather than to strike out the claim and allow for a potential re-filing or appeal?...

(b) Proportionality: Is the striking out of the claim a proportionate response? ...

(c) Fairness: Here, an inquiry into considerations of promptitude, prejudice, costs and delay is relevant....

(d) Other Factors: The nature and circumstances of each case may be different, and a court must be able to identify further considerations such as an abuse of process, the vexatious or frivolous character of the claims, repeated or intentional non-compliance with procedural requirements, alternative remedies, and any other relevant considerations....

(e) Overriding Objective: What orders and/or directions align most appropriately with the overriding objective....”

[33] The third stage is to carry out an evaluative analysis. **“If permission is given to amend a statement of claim, fair terms should be imposed to consider and compensate for any wasted costs and expenses well as to ensure compliance or in default appropriate consequences.”**

[34] Having examined the facts as pleaded in this case and giving due consideration to the full plenitude of the powers available to me, I am not satisfied that the overriding objective is best served by exercising this nuclear option to strike out this case. The approach to be taken here does not involve an overly pedantic and legalistic approach to the pleadings at this early stage in the process. It is to determine whether this claim discloses no reasonable grounds for bringing it and, perhaps, whether it is so incurably flawed, is frivolous or vexatious and/or an abuse of process that the nuclear option ought to be exercised in this instance. I am not so persuaded. In addition to this, it is my view that the legal issues raised in this application are substantive issues of law in relation to a case which has not been fully developed.

[35] In an examination of the facts, it appears to me to be quite clear that the reason for bringing this claim is to secure the beneficial interest in the 3 apartment units constructed by Mr. Romney. I consider this to be reasonable and not vexatious in any way. Neither is this an abuse of the court's process. I also do not agree that a proprietary estoppel simply cannot arise in the circumstances pleaded in this case. As I mentioned earlier, real property, or land, includes the buildings erected thereon. Ownership therefore encompasses not merely legal title to the land itself, but also beneficial or other forms of interests in the buildings erected thereon; especially by those who are in actual occupation. The claimants have clearly pleaded that the 5th defendant and her husband constructed a concrete building on the property as a matrimonial home. This forms part of parcel 60. They raised their children, including Mr. Romney, in that home. Due to the deterioration of the building, Mr. Romney agreed to and expended his own funds in reconstructing this home for the 5th defendant, after her husband had passed away. They allegedly agreed that if he constructed a 4 unit apartment complex he would be entitled to the beneficial interest of 3 of those apartments.

[36] It is also pleaded that upon Mr. Romney's death, the 5th defendant reneged on this agreement and attempted to collect the rent herself. Mr. Romney's estate brings this action for a declaration of his beneficial interest in at least 3 of the 4 units of the apartment complex. They raise an equitable claim against the 5th defendant for what is clearly described as her reneging on the promise which she had made to her son; a promise upon which he has allegedly acted to his detriment. To my mind, there is a substantive claim pleaded against the 5th defendant here regarding her entitlement to preclude Mr. Romney's estate from the benefit of the rent collected from the tenants of the 3 apartments. This is not an issue which ought to be struck out at this stage in the process. This simply does not further the overriding objective.

[37] It is also specifically pleaded in the statement of claim that the claims against the 1st to 4th defendants are brought because they have an interest in the property as the registered proprietors. The full implications for Mr. Romney's pleaded beneficial interest in the building which forms part of the land is a matter which ought to be developed fully and there is no reason here for the court to simply exercise the nuclear option of striking out the claim at this stage in the process. If it is proven at trial, that his estate is entitled to the $\frac{3}{4}$ ownership of the concrete structure attached to the land, then the court's jurisdiction is engaged in determining the most just and equitable approach to be taken in the circumstances. The law as outlined by the applicants does not lend itself to a plain and obvious

answer to the factual issues raised in the pleadings and I am satisfied that, the 5th defendant in particular, is generally in a position to defend the substance of the case made against her.

[38] In light of this, I appreciate that there are some gaps/deficiencies in the pleadings. The first is the circumstances under which the 5th defendant and her husband came to construct the building on the land in the first place. It is clear from the pleadings that this land forms part of at least two estates. The question of what is the 5th defendant's own interest in, not merely the house, but also the land in question is a gap which may clarify the full circumstances of the case. Secondly, the claimants seek declarations and orders to the effect that the court should compel the 1st to 4th defendants to transfer the surrounding lands on which the building is constructed to Mr. Romney's estate and the 5th defendant without any consideration being paid for the land. These are issues on which the court may be better assisted with further particulars before making a final determination on the issue after trial. It is within the plenitude of the court's powers to direct that these particulars are clarified as an alternative to the nuclear option of striking out the claim.

[39] To my mind, there is a clear promise pleaded here, and Mr. Romney's estate clearly pleads that he expended his money in constructing a building on the basis of that promise. If this is taken to be true at this stage then, this building forms part of the land. The question of whether an estoppel arises or that the 5th defendant is reneging on the agreement in seeking to directly collect the rent are legitimate issues and I am of the view that the overriding objective is not best engaged here by simply striking this case out.

[40] In addition to that, the claimants have pleaded that the defendants are unjustly enriched by the fact that Mr. Romney has enhanced the property by the use of his own funds on the basis of the 5th defendant's promise. These are legal matters which the court is best capable of assessing as the case develops.

[41] Further, I am satisfied that the court is empowered to make case management orders and directions which will assist in the proper case management of the matter. This is an appropriate case in which to exercise this discretion. I am not of the view that it is a good use of the resources of the parties or the court to simply dismiss this case without prejudice. There is no benefit to this, and it would be a disproportionate use of the court's powers to do so. The claimants should be granted leave to provide further particulars on the 5th defendant's interest in parcel 60. This will assist the court in the further

case management of this matter and being better equipped to make sure that there is indeed a final resolution to what is clearly a dispute which requires the attention of the court.

[42] However, in exercising this discretion, I am mindful of the fact that there is an outstanding application to amend the claim. It is my view that prior to giving full directions on the amendment and any repercussions for failing to comply with an order granting leave to amend, both parties should have an opportunity to properly address the court on this issue. The claimant's application to amend the claim should therefore be listed for a full hearing, to concentrate specifically on the scope of the amendment to be made and the terms of any sanction in default. For clarity, I have determined that leave is granted to make the amendment on terms to be decided at the hearing of the application.

[43] In the circumstances it is ordered that:

- (a) The application to strike out the statement of claim is dismissed.
- (b) The claimants are to amend the statement of claim, the terms of which are to be settled at a hearing on the orders sought in the claimant's current application to amend.
- (c) At the hearing referred to in (b) above, the court will give further directions on the future case management of the matter.
- (d) There is no order as to costs.

Ermin Moise
High Court Judge

BY THE COURT



REGISTRAR