

THE EASTERN CARIBBEAN SUPREME COURT

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV 2024/0148

BETWEEN:

OLIVE RICHARDSON

PNOBILEE RICHARDSON

and

EAGAN RICHARDSON

Claimants

Defendant

Appearances:

Mr. Septimus Rhudd and Ms. Loreal Wilson for the Claimants

Mr. D Victor Elliott-Hamilton for the Defendant

.....
2024: November 11th

2025: February 18th
.....

JUDGMENT

- [1] **BYER, J.:** This action involves the unfortunate reality of where a family is torn apart over the entitlement to property after the demise of a parent. All parties to this matter are siblings, being the children of the late Daisy Richardson (the deceased), who died intestate on 9th May 2017, at the age of 63. The sole asset of her estate is a residential property registered in her name, located at Cassada Gardens & New Winthropes, Registration Section: Cassada Gardens & New Winthropes; Block: 42 1992 B; Parcel 281. At the time of her death, she resided at the property with the defendant. The claimants lived on the property from their respective births until they left in their teenage years, around 1996, along with their father.
- [2] On 17th April 2024, the claimants in their capacity as Administrators of the Estate of the deceased, having been appointed on 13th September 2022, initiated a claim against the defendant (their brother) by way of a Fixed Date Claim Form ("FDCF") along with a Statement of Claim seeking the following reliefs:

- (1) A Declaration that they are the duly appointed Personal Representatives of the Estate of the late Daisy Richardson and, as such, are lawfully entitled to administer the said estate for the benefit of the beneficiaries of the said Estate.
- (2) A Declaration that the defendant, being one of the beneficiaries of the said Estate, should provide such information and produce such documents and items within his knowledge and/or possession pertinent to the Estate of the Deceased to facilitate a proper administration of the said Estate.
- (3) A Declaration that the said defendant, whether by himself, his servants and/or agents, should not interfere, whether directly or indirectly in the proper administration of the Estate by the claimants and should refrain from taking such actions, whether directly or indirectly, as would prevent, hamper, impede or otherwise further delay the said administration of the Estate by the claimants.
- (4) An order that the defendant should quit and vacate and remove his possessions from the residential property situated at Cassada Gardens in the Parish of St. John's, and registered as Registration section: Cassada Gardens & New Winthropes; Block: 42 1992 B; Parcel: 281 which said property is the sole asset of the Estate of the late Daisy Richardson and which property forms the only asset to be administered by the claimants as Personal Representatives.
- (5) An Order that the defendant provide a true and accurate accounting of his dealings with the assets of the estate and render an accounting of all monies received by him from his dealings with the Estate from the 13th day of September 2022 from which said date the claimants were appointed as the lawful Personal Representatives of the Estate.
- (6) That such other be made as the Court deems fit.
- (7) An order for costs.

[3] In response to the said claim, the defendant, on 23rd May 2024, filed a Defence and Counterclaim, denying all allegations made by the claimants. He asserted in his defence that while the deceased was the sole legal owner of the property, the deceased held it in trust for him. He contended that there was a common intention between himself and the deceased that he would have a beneficial interest in the property. Accordingly, he claims that the estate now holds the property on trust for him and that he has an independent right to occupy it. He further asserts that his continued occupation is justified by his equitable ownership of the property.

[4] In his Counterclaim, the defendant stated that he lived with his mother until her death on 9th May 2017. He asserted that after the claimants left with their father, the deceased was left in a financially crippling position, with her only asset being the property, which had not yet been developed in its current form. At that time, the property consisted only of the main house and a downstairs building, which was used as a warehouse.

- [5] The defendant claimed that sometime in 1996, he and the deceased entered into an oral agreement based on their joint intention that he would assume financial responsibility for repairing the main house, constructing various buildings on the property, and developing it as he saw fit. He further asserted that, as part of this agreement, he was to hold the beneficial interest in the property. In reliance on this joint intention, he states that he has acted to his detriment.
- [6] He alleged that around 2002, using funds from his business, he constructed two apartments in front of the main house. He subsequently expanded the building previously known as the warehouse, enlarging the downstairs section before beginning construction of an upper floor. He further claims that to complete the roof, in 2005, he obtained a loan from First Caribbean International Bank ("CIBC") in the names of himself and the deceased XCD\$989,839.65 and that although the loan was acquired jointly, he asserted that the sole responsibility for its repayment rested on him.
- [7] The defendant asserted in his pleadings that the deceased was only added to the loan as the property was used as security, and she was the legal owner. Additionally, the defendant averred that he acted as a de facto foreman or contractor, personally completing much of the physical work, including, but not limited to, tiling, welding, preparatory plumbing, preparatory electrical work, and physically assisting with the completion of the roofs of the apartments. He also claimed to have financed the repairs and upkeep of the main house.
- [8] The court heard evidence from multiple witnesses in this matter. The claimants testified on their behalf while the defendant provided his testimony and called witnesses Sylvanus Lawrence, Charles Thomas, Miriam Samuel, Kennedy Reid, and Enyn Holsborough.
- [9] In relation to the witnesses called on behalf of the defendant, this court found that their evidence was of very little utility to the court in determining the issues raised by the defendant on his counterclaim. It was clear at the trial that the information that was being relayed by these witnesses was very limited and to what they believed may have been the financial arrangement as between the deceased and the defendant. However, on cross-examination, they all agreed that they did not have any intimate knowledge of the source of the money used in the renovations and improvements of the property. The court, therefore, accepts that all these witnesses could speak about and which the court accepts on a balance of probability occurred given the fact (a fact which is not disputed) that the defendant lived at the property and was as such involved in the physical labour and organization of the improvements on the property.

The Evidence

Olive Richardson (1st Claimant)

- [10] The witness testified that at the time of her mother's death, the defendant resided on the property that is the subject of these proceedings. She stated that she left the property in 1996. At the time when she left the property, she recalled for the court that the structures that were present on the land were the main family house, a smaller building at the front containing two apartments, a half-built structure, a warehouse, and the beginnings of an apartment on the upper level of the warehouse.
- [11] She confirmed that at present, pursuant to the order of the court made on 20th June 2024, she as administrator is in possession of the property. Regarding the current state of the property, she stated that the upper level of the warehouse is now complete, which comprises nine apartments across two floors, with six apartments located on the upper level.
- [12] As the administrator of the estate, the witness acknowledged her duty to account for the assets and liabilities of the property. She stated that, to her knowledge, there were no outstanding liabilities. However, she confirmed that there had been a loan on the property prior to her taking possession. Upon being shown a letter from First Caribbean Bank,¹ she recognized it but was unable to confirm all the amounts associated with the loan, explaining that she had been absent from the property for several years and had a strained relationship with her brother during that time.
- [13] She acknowledged that her mother had previously mentioned the loan but did not disclose the specific amounts. The witness could not confirm the identity of the co-borrower, stating that her mother had not provided that information. Additionally, she was not aware of the workers who had completed the warehouse construction.
- [14] Regarding her mother's occupation, the witness testified that the deceased had been a businesswoman who operated a candy store, pet store, a flower shop in town, and rental apartments. She stated that the businesses located in town were closed approximately one to two years before her mother's death but denied that they had closed as early as 2009.
- [15] The witness was further questioned about the financing of the improvements on the property. In cross-examination, the suggestion was made to her that the defendant was a co-borrower who assisted with the loan from First Caribbean. Although she responded that she was unsure of the arrangements for the loan repayments, under insistent cross-examination, she did acknowledge that there was evidence that

¹ Page 1 of TB 3 filed 22/10/2024

the defendant had made payments on the loan but stated that this did not amount to proof in support of his claims of having made additional investments in the property.

- [16] She further testified that while the defendant perhaps may have undertaken improvements to the property, this was done under the instructions of their mother, who, to her knowledge, provided the necessary financing. This witness did however concede that having seen the documentation that supported the defendant's contention of a bank loan, that both the defendant's and her mother's names appeared thereon, it was likely that, her mother and brother were likely responsible for repaying the loan. This witness however candidly told the court that although she knows that improvements were done and she believed that the defendant may have done so under the direction of his mother, she could not be totally certain of this, as she was not around the property at the time the same were undertaken and she did not know for certain who was responsible for the work that was done. In the final analysis, this witness was forthright to the court when although she did not accept that the defendant was the person solely responsible for any improvements that exist on the property, she had to admit that she was however not aware of any agreement or arrangement that may have existed as between the deceased and the defendant on the same.

Pnobilee Richardson (2nd Claimant)

- [17] This witness stated that at the time of her mother's death, she did not reside at the premises, although she had lived there previously. She confirmed that like her sister, the first claimant, she left the property in 1996. In agreement with her sister, this witness confirmed that on her departure, the property consisted of the family house, two apartments near the family house, a warehouse, and apartments located above the warehouse. However, unlike her sister, she went on to state that in 1996, there were six apartments above the warehouse, but they were under construction and not yet being used as rental units.
- [18] When this witness was referred to correspondence upon which the defendant relied emanating from First Caribbean International Bank², she acknowledged that she had not been aware that in 2005, her mother and the defendant had obtained a loan from the bank. Upon reviewing the document, she further acknowledged that she recognized that the stated purpose of the loan was the completion of a six-bedroom apartment building, which she accepted could have been the six (6) apartments that she had mentioned were under construction when she left the property in 1996.
- [19] She confirmed that at present, tenants were residing on the property and that she was aware of the existence of the tenancy agreements under which they occupied the premises. She, however, had to

² Page 1 TB3 filed 22/10/2024

concede that although she knew that tenants were on the property, she was not aware as to who had been responsible for managing the rentals.

- [20] The gravamen of this witness' evidence like that of her sister was that she held doubts as to whether the defendant had, in fact, contributed to the improvements that occurred on the property. Also like her sister, she had to admit, under cross-examination that even though she held those doubts, and had asked for proof of such expenditure, she and her sister were not privy to the discussions, or the decisions made by the deceased and the defendant in those years between them leaving the family property and the death of the deceased.

Eagan Richardson (Defendant)

- [21] The defendant clearly stated to the court that he and his mother remained on the property that had belonged to his father after his father and his sisters left the property on the breakdown of his parents' marriage. The defendant stated that he was a self-employed businessman and was also one during the period that he resided on the property with his mother earning approximately USD\$20,000.00 a month from his business ventures.
- [22] Under intense cross-examination, the witness maintained his claim that he had invested over XCD\$4,000,000.00 in the property from 1999 to present. He sought to rely on documents presented to the court, which he said upheld his contention that this money that was expended consisted of personal sums and a loan of just under XCD\$1,000,000.00 obtained from the First Caribbean Bank in 2005.³
- [23] However when this witness was pressed on the contents of the documentary evidence he relied upon for his financial contribution, he admitted that in fact upon noting the contents of the correspondence and the entries made on the land registers⁴, that the property had in fact had existing charges and that the 2005 facility that was extended to the deceased and himself was not simply monies standing as his investment but in fact monies used to cover a prior facility and to provide financing for the improvements on the property.
- [24] However, despite this admission on the part of the witness, he reiterated his claim of the sums that he personally invested but then went on to further admit that he had however failed to produce any evidence to demonstrate that the borrowed funds were specifically used for the construction of the apartments or that he had a bank account from which he debited funds for the construction.
- [25] When pressed on cross-examination as to how the funds he says were disbursed based on the loan were distributed, he responded that the same were deposited into a chequing account held jointly with

³ Page 1 and 9 TB3 filed 22/10/2024

⁴ Pages 107 and 109 of TB3 filed 22/10/2024

his mother from which cheques were written to meet different needs. However, when he was asked if he had produced even one returned cheque to that effect, he was forced to admit that he had not. Further, when he was pressed on cross-examination, he admitted that in fact some of the sums so advanced had been used in the deceased's business at the time, Richardson's Confection. Having said so and having failed to produce any cheques that were used in the construction confirming payments toward the construction of the building, he also conceded that no bank statements or printouts had been provided to show how the funds were received and disbursed. He accepted that payment vouchers and slips did not reflect all amounts paid into the bank and acknowledged the absence of any documentary evidence proving that four million dollars had been spent on the property. In fact when the exercise was undertaken to examine the purported loan payments made by the defendant, (and upon which he had relied to show that he was responsible for the repayments) he had to finally admit that the documents did not show any consistent payments towards the loan account but showed deposits being made to his business account with no concomitant payment to the loan itself. ⁵

- [26] When the defendant was further questioned as to the reliability of the statements regarding his contribution, he was referred to documents showing valuations of the property done in 2016 ⁶and then some seven years later in 2023⁷. Having admitted that he saw that the land in that seven year period had in fact doubled, he had no answer to give for the apparent decline in value of some of those buildings during the period he alleged had had been solely responsible for their upkeep (that is after the passing of the deceased) other than to say that the buildings needed maintenance and the interest payments limited his ability to do so.
- [27] When this witness was shown the documents, he relied upon as monies he said he spent on the maintenance and repairs of the buildings, he admitted that what he had produced were quotations for work done and not actual receipts of work undertaken and that in fact, in some instances, he had provided the services himself.
- [28] When at the close of the cross-examination it was suggested to the witness that he had failed to show a contribution to the property in the region of the alleged four million dollars, he had simply responded by stating, "the property exists" and as such he had presented the court with sufficient evidence that he had funded the investment in the property through the loan proceeds and his own finances.

⁵ Pages 130- 162 TB3 filed 22/10/2024

⁶ Page 19 TB3 filed 22/10/2024 at page 43

⁷ Page 60 TB3 filed 22/10/2024 at page 89

The claimants' submissions

- [29] The claimants identified three key issues for the Court's determination: (1) whether they are entitled to the declarations and orders sought as the lawfully appointed personal representatives of the Estate; (2) whether the defendant has established a proper legal basis for the property to be held on trust for him; and (3) if so, whether the property is held entirely or partially on trust for the defendant.
- [30] The claimants' entitlement to administer the Estate is not in dispute. The primary question however is premised on whether the defendant has any real entitlement to the property under his counterclaim. If the defendant has proven such an entitlement, he cannot, in this sense, properly be considered a creditor of the Estate. For brevity, the Court will address issues 2 and 3 together in the claimants' submissions.
- [31] The claimants submitted that the defendant has failed to establish a proper legal basis for the subject property to be deemed held on trust for him in their capacity as personal representatives of the Estate. They contended that it is a fundamental principle of civil law that "he who asserts must prove," and as such, the burden of proof in relation to the counterclaim rests entirely on the defendant. The claimants further submitted that the defendant is required to satisfy the Court, on a balance of probabilities, as to the merits of his case.
- [32] The claimants acknowledge that while the standard of proof in civil cases is on a balance of probabilities, this standard is flexible in its application. They rely on the principle articulated by the Court of Appeal in *Marilyn Jeffers nee Weste v The Personal Representatives of the Estate of Wyndham Weste, Deceased et al*⁸, which affirmed the position stated in *R (on the application of AN) v The Mental Health Review Tribunal (Northern Region)*⁹. Specifically, they highlight that the more serious the allegation or its potential consequences, the stronger the evidence required to discharge the burden of proof. While the standard of proof does not change, the quality and strength of the evidence necessary to meet it must be commensurate with the gravity of the allegations or their consequences.
- [33] The claimants contended that the essence of the defendant's counterclaim is that he has expended approximately \$4 million on improving the property. They argue that this is a substantial sum, and if the defendant's allegations are proven, the consequences would be significant, as the property is the sole asset of the Estate. The claimants submitted that the defendant's success on his counterclaim would effectively result in the property being held on trust for him, thereby wholly disentitling the other beneficiaries of the Estate.
- [34] The claimants submitted that the defendant has failed to adduce strong and credible evidence in support of his counterclaim, particularly in light of the seriousness of his assertions and the magnitude of the

⁸ ANUHCVP2022/0013

⁹ [2006] 4 All ER 194 at paragraphs 60 and 62.

alleged investment. They argue that such evidence should include documents such as bank statements, records of loan disbursement and repayment, signed building contracts, invoices, and receipts for materials, cancelled cheques, or credible oral testimony from persons with direct knowledge of the loans, repayments, or construction work. The absence of such evidence, they contend, renders the defendant's case wholly deficient.

- [35] The claimants emphasized that the defendant has failed to produce credible or sufficient evidence to substantiate his claims, particularly regarding the alleged expenditures and any assurance made by the deceased that the property would be his. They maintain that the Court should hold the defendant to the requisite standard of proof and dismiss his counterclaim for lack of evidence.
- [36] The claimants further submitted that even the two valuation reports prepared by Engineer Wayne Martin in 2016 and 2023¹⁰ failed to support the defendant's allegations of substantial investment in the property. They highlight that on a comparative analysis of the reports, both 2016¹¹ and 2023¹², reveal a decline in the individual values of the buildings and the chain-link fence over the seven years. The claimants assert that this decline contradicts the defendant's claim of significant expenditure, as no substantial improvements or value enhancements to the property are reflected in the reports. They argue that the only aspect of the property that has appreciated in value is the land itself, which they submit is attributable to general market trends and not to any actions taken by the defendant.
- [37] The claimants emphasize that the defendant has failed to demonstrate that funds purportedly obtained through bank loans were used to improve the property. They reference a letter dated October 19, 2005¹³, from First Caribbean Bank Limited, which indicates that the loan proceeds were intended for completing a six-bedroom apartment building, debt consolidation, and refinancing an overdraft. The defendant having admitted during cross-examination that some of the loan proceeds were used by the deceased for her business, further, in their submission, undermines his claim. The claimants submitted that the defendant has not discharged the burden of proving the portion of the loan funds allocated to and actually expended on the property.
- [38] The claimants asserted that they are under no legal obligation to disprove the defendant's claim of the monies spent on the property. Rather they argue that the defendant's allegations are unsupported and must be rejected he having failed to provide credible evidence to substantiate his counterclaim. They argue that, while the defendant asserts that substantial sums were spent improving the property,

¹⁰ Trial Bundle III – Pages 19-44 and Pages 60 – 90

¹¹ Supra

¹² Supra

¹³ Supra

including bank loans and personal funds, the evidence presented is wholly insufficient as such should be dismissed outright.

- [39] In the final analysis, the claimants contended and submitted that, based on the totality of the evidence, the defendant has failed to establish a proper legal basis for the property to be held on trust for him. They submit that the defendant's entitlement extends only to his share as a beneficiary of the Estate and that no equitable interest arises from his alleged contributions.
- [40] Further, the claimants argued that if the defendant asserts the Estate is indebted to him as a creditor, he is obligated to submit a formal claim, accompanied by supporting documents. The personal representatives, in accordance with their legal duties, would then assess and process the claim, ensuring reimbursement on the same basis as any other creditor, he having failed to do so, they maintain the position that the defendant should stand in equality with them as beneficiaries of the estate.

The Defendant's submissions

- [41] The defendant submitted that the basis of his claim is grounded in the principles of proprietary estoppel, as outlined in *Nelson v Alcide*¹⁴, which must also be considered in light of the more recent authority of the United Kingdom Supreme Court case of *Guest and another v Guest*¹⁵ where the authorities emphasize a broad enquiry into the relevant evidence. He contended that the court should not embark upon a minute calculation of his financial contributions, and the absence of receipts for dealings dating back to 1997 should not be considered fatal to his claim. He further stated that as the previous authorities established, the detriment suffered need not consist solely of monetary expenditure or other quantifiable financial loss but must be substantial in nature. He therefore submitted that the court is mandated to undertake an assessment of the totality of the evidence when considering his claim.
- [42] The defendant in support of his claim as pleaded, highlighted to the court that the evidence showed that he had uninterrupted residence on the property with the deceased, Daisy Richardson, his mother, until her passing. That further during that time, he undertook substantial construction and management activities in relation to the property by constructing several buildings and completed six (6) apartments and completed units in another building referred to as Building 3. Having done this work, the defendant submitted that he only did so in reliance on assurances made to him by the deceased that the property would be his upon her passing.

¹⁴ SLUCVAP2018/0002, delivered on 8th April 2020.

¹⁵ [2023] 1 All E.R. 695

- [43] The defendant further submitted that his reliance on this assurance by his mother also translated to his willingness to enter into the loan agreement with the First Caribbean Bank as a co-borrower. He submitted that his personal liability for the loan, amounting to \$700,000.00 plus interest, was significant and had a lasting impact on his debt-service ratio, thereby demonstrating substantial detriment. He contended that these actions were carried out to the exclusion of the claimants, his sisters, who left the property decades prior and were done based on his own arrangement with the deceased.
- [44] Finally, the Defendant submitted that when the court considers the evidence in its totality, it was entitled to find that there was a clear and unequivocal representation by the deceased to the defendant that he would inherit the property, which ultimately formed the foundation of his reliance and subsequent actions. The defendant submitted that from that, it would be clear that he had established the elements of proprietary estoppel and that the court should find in his favour on his counterclaim.

Court's considerations and analysis

- [45] From the evidence and the submissions, it is clear to this court that it must consider the principles of both constructive trust and proprietary estoppel in the context of the counterclaim that has been filed by the defendant in response to the claimant's claim for possession as the administrators of the Estate of the deceased as they are entitled to under the law.
- [46] The defendant, in his defence and counterclaim, has asserted a beneficial interest in the property on the basis that assurances were made to him by his mother and that he acted to his detriment in reliance on those assurances. In his submissions, he advanced that he is entitled to rely on the principles of proprietary estoppel as the legal foundation of his claim. The claimants, although disputing any entitlement of the defendant beyond his share in the estate as a beneficiary, considers that in the alternative any asserted interest must properly be examined within the framework of a constructive trust. The burden of proof in establishing that either of these principles of law are applicable to him, of course rests on the defendant. That being said therefore, the court must first determine whether the defendant can find himself within the parameters of either of the principles of law, and if so, what would his entitlement, if any, be in those circumstances.
- [47] The court has considered the extensive submissions of the defendant on proprietary estoppel, in which significant emphasis was placed on the centrality of unconscionability in assessing such claims. While the court acknowledges that unconscionability is a critical consideration in determining whether the court should make a finding in favour of the party who invokes its protection, it must be remembered that this concept does not operate in isolation. The defendant must first establish the threshold requirements.

Without satisfying the fundamental elements, the issue of unconscionability does not arise, as there would be no proper basis for a claim in proprietary estoppel.

- [48] The essential elements of proprietary estoppel are well established. As stated by the defendant, the court adopts the authority of **Nelson v Alcide**¹⁶, a judgment delivered by Farara JA, where in paragraph [49] he stated the following:

"(i) There must be an assurance or representation, whether express or implied, that the claimant has or would have an interest in the land of the defendant or his or her estate; (ii) reliance by the claimant on that assurance or representation; and (iii) the claimant must act to his or her detriment in reliance upon the assurance or representation. These three elements, in combination, must lead the court to conclude that it would be unconscionable or inequitable for the person who has made or given the assurance relied on, to resile from it."

- [49] Thus, the defendant is required to establish (i) a clear and unequivocal assurance given by the owner of the property whether express or implied, (ii) reasonable reliance on that assurance, and (iii) detriment suffered as a result. The court wishes to take the time, at this point, to note and accept the defendant's argument that detriment is not a narrow or technical concept. As observed by Robert Walker LJ in **Gillett v Holt**¹⁷, detriment need not consist of financial expenditure or other quantifiable loss, provided it is something substantial. However, it is imperative to examine each element in turn. The first inquiry, therefore, is whether the defendant has met the threshold requirement of assurance.

Assurance in proprietary estoppel

- [50] In **Thorner v Major and Others**¹⁸, the House of Lords held that to establish proprietary estoppel, the relevant assurance must be clear enough. The degree of clarity required is context-dependent, but the promise must be unambiguous and must appear to have been intended to be taken seriously. It must also be of such a nature that a reasonable person in the claimant's position would expect to rely upon it.
- [51] Lord Scott of Foscote, in paragraph [14] of the judgment, stated that "... *the representation or assurance would need to have been sufficiently clear and unequivocal ...*" The Law Lords, however, further explained that proprietary estoppel is not confined to cases "*where an explicit promise has been made*;

¹⁶ SLUCVAP2018/0002 on 8th April 2020

¹⁷ [2000] 2 All ER 289.

¹⁸ [2009] UKHL 18

it may also arise where no actual promise exists, such as where one party makes improvements to another's land under a mistaken belief and the owner either knowingly permits the mistake or seeks to take unconscionable advantage of it" (Lord Walker of Gestingthorpe, paragraph [54]). However, the present case does not fall within that category, and in this case, the defendant is required to prove that there was an assurance given by his mother (the deceased) which was sufficiently clear and unequivocal.

- [52] The defendant asserts that his mother made oral representations to him that the property "was going to be mine¹⁹" and, on this assurance, he remained and developed it rather than investing elsewhere. He further contends that she justified this assurance by stating that he alone took care of her financially and personally while his siblings had abandoned her²⁰.
- [53] Against this background, the court must determine whether these alleged statements constitute an assurance that meets the required standard under proprietary estoppel. The case of **Thorne v Major**²¹ establishes that the clarity of an assurance must be assessed in context.
- [54] In assessing the evidence, it is notable that the alleged assurance is supported solely by the defendant's own testimony. There is no written agreement, will, or transfer document evidencing the deceased's intention to confer ownership. Furthermore, no independent witnesses have attested to hearing the deceased make such a representation. Crucially, the statement that the property "was going to be mine" is inherently ambiguous. It does not specify when or how ownership would pass to the defendant. As cautioned in **Thorne v Major** (*supra*), representations concerning future inheritance are particularly difficult to establish as proprietary estoppel claims because intentions may change over time²².
- [55] Moreover, family discussions regarding inheritance are often informal, and the House of Lords has indicated that courts have been reluctant to recognize mere expressions of intention or familial gratitude as sufficient assurances in law²³. The absence of any formal steps taken by the deceased to effectuate this alleged promise further weakens the defendant's claim.
- [56] The principle articulated in **Crabb v Arun District Council**²⁴ reinforces this position. In that case, the court emphasized that proprietary estoppel arises where the representor's conduct reinforces the assurance given. Here, however, the deceased did not execute a transfer, exclude other potential beneficiaries, or act in any way that would unequivocally support the claim that she was committing to a permanent transfer of ownership.

¹⁹ See paragraph [5] of the defendant's witness statement in trial bundle 2, pg 32.

²⁰ *Ibid*.

²¹ *Supra*

²² [2009] UKHL 18. See paragraph 19.

²³ [2009] UKHL 18. See paragraph 57.

²⁴ [1975] 3 All ER 865.

- [57] Accordingly, in applying the principles established in *Thorner v Major*²⁵, the court finds that the threshold requirement of assurance has **not** been met. The defendant has failed to prove, on a balance of probabilities, that the deceased made a '**clear and unequivocal representation**' that he would acquire a proprietary interest in the property. Consequently, the defendant's claim based on proprietary estoppel **fails at the first hurdle**, and no further analysis of reliance or detriment is necessary.
- [58] While the claim under proprietary estoppel fails due to the lack of a sufficiently clear assurance, the court must nonetheless consider whether the defendant may have an alternative claim under the doctrine of constructive trust, given the pleadings of the defence and counterclaim.

Does the defendant have an alternative claim under Constructive Trust?

- [59] This case concerns a dispute arising within a **familial context**, in which the defendant asserts that he was given oral assurances by his mother regarding his future entitlement to the property. Cases involving family relationships and assurances of property ownership present unique legal challenges, particularly where the alleged promises relate to inheritance.
- [60] The relevance of constructive trust in **familial cases involving property assurances** was also considered in *Thorner v Major*²⁶. Interestingly, in that case, the House of Lords was faced with assessing a similar familial matter involving two cousins who were farmers. The claimant had worked on the deceased's farm, providing considerable assistance without remuneration, and initially hoped that he might inherit the farm. This hope later turned into an expectation when, in 1990, the deceased handed the claimant a bonus notice on two life assurance policies, stating, "That's for my death duties." The lower court and the House of Lords ultimately held that, in the circumstances, the claim of proprietary estoppel must succeed.
- [61] Although the House of Lords upheld the claim under proprietary estoppel, it also acknowledged that in cases where promises relate to inheritance, the doctrine of constructive trust may provide a more appropriate framework for analysis. Lord Scott of Foscote, in paragraph [19] of his judgment, stated that a fundamental problem inherent in proprietary estoppel claims based on representations about inheritance is that "the expected fruits of the representation lie in the future, on the death of the representor, and, in the meantime, the circumstances of the representor or his or her relationship with the representee, or both, may change and bring about a change of intentions on the part of the representor. *Gillett v Holt* was such a case."
- [62] Further, in paragraph [20], Lord Scott of Foscote went on to reflect on the relationship between proprietary estoppel and constructive trust, questioning their respective roles in providing remedies where

²⁵ [2009] UKHL 18

²⁶ [2009] UKHL 18

representations about future property interests have been made and relied upon. The House of Lords sought to clarify this distinction, noting that proprietary estoppel is generally more applicable to cases in which the representations relate to an immediate or near-immediate acquisition of an interest in the property. In such cases, estoppel operates to prevent the representor from denying that the representee has the proprietary interest that was promised.

- [63] By contrast, the House of Lords suggested that where representations concern **inheritance prospects**, the doctrinal basis for relief is less easily reconciled with proprietary estoppel principles. Instead, such claims may be more appropriately understood through the lens of constructive trust. As Lord Scott of Foscote explained:

“.... cases, where the relevant representation is related to inheritance prospects, [and which] seem to be difficult, for the reasons I have given, to square with the principles of proprietary estoppel established by the Ramsden v Dyson and Crabb v Arun DC line of cases I find them ... easier to understand as constructive trust cases.”²⁷

Constructive Trust

- [64] Thus a constructive trust may arise where there is a common intention, either express or inferred, that the claimant is to have a beneficial interest in the property, and the claimant has acted to their detriment in reliance on that common intention. It is an equitable remedy imposed by the court whenever justice and good conscience require it. As described in **Hussey v Palmer** by Lord Denning MR²⁸, it arises in circumstances where it would be unconscionable for the legal owner to retain the property solely for themselves, to the exclusion of another who has contributed in a way that justifies recognition of a beneficial interest.
- [65] This trust may be imposed at the time of property acquisition or may develop over time, depending on the circumstances. It is a ‘flexible doctrine of equity’, allowing the court to grant restitution where a party has acted in reliance on an expectation that they would have an interest in the property. Notably, constructive trust can arise even in the absence of a formal agreement or express declaration of trust. For instance, where a person contributes to the purchase price or makes significant improvements to the property, equity may intervene to prevent the legal owner from unfairly excluding them. In such cases, the law imposes a trust proportionate to the claimant’s contribution, ensuring that

²⁷ Supra paragraph 20

²⁸ [1972] 3 All ER pg. 747.

the property is not unjustly retained by the legal owner at the expense of another who has acted to their detriment²⁹. The court went on to state that “just as a person, who pays part of the purchase price, acquires an equitable interest in the house, so also he does when he pays for an extension to be added to it.”³⁰

- [66] Accordingly, a constructive trust arises where it would be unjust for the legal owner to deny another person’s interest in the property. For such a finding to be made, the defendant must demonstrate that he contributed to the property based on representations made by the deceased of a common intention that he should benefit and that he did so to his detriment. Equity intervenes in these circumstances to prevent the legal owner (the estate of Daisy Richardson) from unjustly retaining the full benefit of the property at the expense of the defendant.

Common Intention

- [67] For constructive trust to arise, it is necessary to establish that the parties shared a common intention that the defendant would have a beneficial interest in the property. This intention may be expressed where there is a clear agreement or implied where it is inferred from the parties’ words and conduct.
- [68] An authority on this issue is **Lloyds Bank PLC v Rosset**³¹, where Lord Bridge clarified that common intention can be determined either expressly through direct agreement or implicitly from the parties’ actions. He emphasized that the key consideration is not whether a formal bargain was made or whether detriment was suffered in isolation, but whether there was a mutual understanding—even if not explicitly stated—that the claimant was to have an interest in the property. Furthermore, for an implied common intention, the court must assess conduct that is referable to that intention, creating circumstances where equity would recognize a beneficial interest.
- [69] Importantly, for this common intention to give rise to an equitable interest, the claimant must have acted in reliance on it, furthered it, or taken steps referable to it. Without such reliance, no constructive trust will arise, even if an informal understanding exists between the parties.
- [70] As previously determined under proprietary estoppel, the alleged oral assurance by the deceased that the property “was going to be³²” the defendant’s was too vague and uncertain to constitute an express assurance, and in this instance, an express common intention. The court must however now assess whether an implied common intention can be inferred from the conduct of the parties and the circumstances surrounding their financial and personal involvement with the property.

²⁹ *Hussey v Palmer* [1972] 3 All ER pg. 747 applied.

³⁰ *Ibid* at page 747 (f)

³¹ [1991] 1 A.C.107 pg.121.

³² Paragraph 5 of defendant’s WS, TB2 filed 22/10/2024 pg 32.

- [71] A common intention can be implied where the actions of the parties indicate a shared understanding that the defendant would have a beneficial interest in the property. This requires consideration of factors such as occupation, financial contributions, involvement in property improvements, and the overall course of dealings between the parties.
- [72] The evidence before the court establishes that by 1996, the defendant and his mother were the sole occupants of the property, as the father and sisters had moved out. The property was later transferred to the deceased in 1997³³, at which point she became the sole legal owner.
- [73] The defendant asserts that at some point after 1996, his mother encouraged him to develop the property, stating that it “was going to be [his]” because he was the only one assisting her financially and personally. He claims that based on this assurance, he chose to invest in the property rather than another, believing that he had a future interest in it. According to the defendant, “*Based on what she told me, I was not reluctant to invest in the property and develop it instead of another property*”. He expressed that he “went in deep”.³⁴
- [74] While there is no clear timeframe for when this conversation occurred, based on the evidence, presumably, it was sometime between 1997 and 1999 (the first time the parties allegedly jointly acquired a loan against the property)³⁵. Additionally, the longstanding co-occupation of the property and subsequent financial and construction activities provide some context in which the alleged understanding arose.
- [75] The property was subject to multiple loans. The property title³⁶ reflects six (6) registered encumbrances, with charges recorded at various intervals. On 8th August 1994, a charge of XCD 80,000.00 was registered, followed by an additional charge of XCD 200,000.00 on 30th April 1998. On 3rd March 1999, a further charge was recorded in favour of First Caribbean Bank (Barbados) Ltd (“CIBC”), securing a loan of XCD 700,000.00, with interest at 12.5% per annum. Subsequently, on 12th February 2002, another charge was registered in favour of CIBC for XCD 110,000.00, attracting an interest rate of 13% per annum. The final recorded charge, dated 4th January 2006, was also in favour of CIBC, securing XCD 186,000.00, with interest at 2% per annum.³⁷ It is noteworthy that save and except the loan taken in 1994, all the other charges over the property were during the period that the defendant and the deceased lived on the property together.
- [76] By the defendant’s evidence, the loans obtained between 1999 and 2006 were intended to facilitate the completion of a (6) six-bedroom apartment building, debt consolidation, refinancing of an overdraft

³³ TB 3- Part 2, pg 106. Filed 22/10/2024

³⁴ Paragraph 5 of defendant’s WS, TB 2 pg 32, filed 22/10/2024

³⁵ see paragraph 7 on page 33. TB 2 filed 22/10/2024 This document was never produced to the court but was simply reflected on the Certificate of Title

³⁶ Supra

³⁷ TB 3, Part 2, pages 106–109 filed 22/10/2024

facility, and payment of accrued interest. Further, in a letter dated 19th October 2005³⁸, First Caribbean Bank (Barbados) Ltd approved a loan of XCD 90,200.00 for the amalgamation of Loan No. 1704890 and an overdraft facility of XCD 85,000.00. As a result, the bank registered a caution reflecting total indebtedness of XCD 1,340,000.00³⁹.

- [77] This was followed by additional financial arrangements, including a 2006 charge that consolidated prior loans, for which both the deceased and the defendant were jointly and severally liable⁴⁰. This without more, in this court's mind reinforces the defendant's contention of his financial involvement in property-related borrowings.
- [78] Although the defendant asserted that he was solely responsible for repaying these loans, this was not independently supported by the evidence (which will properly be dealt with below). However, an inference can be drawn that his participation in securing property-related loans suggests some level of financial commitment to the property's future especially when the court considers that his exposure to liability for the payment (whether he paid or not) was equal to that of the deceased who by all accounts was not a young person by this time.
- [79] The court therefore accepts that additional apartment buildings were constructed on the property following the departure of the father and sisters. The defendant asserted that he was involved in this process, stating that he personally contributed to the construction efforts and hired workers to assist. There is supporting evidence confirming that workers were engaged and that they did perform work on the buildings, albeit with payment delays and no indication as to where the funds came from for their payment
- [80] While the extent of the defendant's financial contributions remains unclear in this court's mind it can be inferred that there was some monetary contribution by the defendant towards the development and expansion of the property as the evidence supports the conclusion that he was involved in some way. This involvement, when considered alongside his financial contributions, suggests a degree of responsibility and commitment to the property which in this court's mind he would not have entered had he not been of the belief that he would have ultimately benefitted.
- [81] Considering the totality of circumstances, the court finds that an implied common intention can be inferred, based on the defendant and the deceased being the only occupants of the property since 1996, the property being transferred to the deceased in 1997, establishing her as the legal owner, the defendant and the deceased jointly securing loans, starting in 1999, with some intention of property expansion, evidence of additional apartment buildings being constructed, with the defendant involved in

³⁸ Supra

³⁹ TB 3 – Part 1, pages 1 – 16 filed 22/10/2024

⁴⁰ TB 3- Part 2, pages 110-115 filed 22/10/2024

some capacity and a pattern of financial and physical involvement suggesting that the defendant had an ongoing role in the property's affairs.

- [82] While the precise nature of the common intention is not explicitly defined, the evidence supports the inference that there was an understanding between the deceased and the defendant that he would obtain a stake in the property. The next issue for determination is whether the defendant acted to his detriment in reliance on that common intention.

Reliance and Detriment

- [83] Having established an implied common intention, the court must now determine whether the defendant acted to his detriment in reliance on that common intention. A claimant proves detrimental reliance by demonstrating that they took actions, financial, physical, or otherwise, that they would not have undertaken but for the assurance of an interest in the property.

The Nature and Extent of the Defendant's Contributions

- [84] The defendant asserted that he expended over XCD 4,000,000.00 on the property. However, there is no direct evidence supporting this figure, and the court accepts the claimant's position that the quotations provided by the defendant purportedly in support of this contention, are not probative of actual expenditure. Similarly, while a deposit book from the bank was submitted for the court's inspection as evidence of deposits made to the loan account by the defendant, the contents therein fell short of showing that any such payments as evidenced substantiated that either the funds deposited were obtained solely by the defendant or that the loan proceeds obtained were in fact directed towards any improvements.
- [85] However, despite these evidentiary shortcomings, the defendant's contributions cannot be disregarded entirely. The evidence presented supports that the defendant initiated and participated in significant construction work on the property, including the conversion of the warehouse into apartments, the addition of new apartment units, and various renovations to existing structures.
- [86] Several witnesses corroborated that the defendant was involved in the construction of the property though the precise extent of his financial investment remains unclear. The defendant also remained on the property and took responsibility for its maintenance over an extended period. His evidence⁴¹ states that his mother ceased working around 2009 and became bedridden for approximately two (2) years before her passing in 2017. This assertion was left unchallenged by the claimants, who, as her children, would

⁴¹ See paragraph [13] of the defendant's witness statement.

have been in a position to refute it if it were inaccurate. Their failure to do so lends credibility to the defendant's account in this respect.

- [87] The defendant further stated that approximately a year before securing the mortgage for property development, he had been responsible for making improvements to the house. He commenced construction by building two apartments in front of the main house, consisting of a single unit upstairs and another downstairs, which he asserted were financed entirely from his funds. He further stated that he initiated construction on top of the warehouse and initially bore the costs of construction himself before deciding to seek financing from the bank to complete the project⁴². The court finds no difficulty in accepting this evidence, as it is consistent with the overall pattern of development on the property and a fact to which the deceased would have obviously acquiesced in during her lifetime.
- [88] It was clear from the evidence, and which the court accepts on a balance of probabilities, that the defendant indeed took an active role in the development of the property. Although it was denied by the claimants that the deceased stopped working and closed the business in town as early as 2007, the claimants did not present any contradictory evidence of the continuation of the business until 2015, some two years before the passing of the deceased. This court, however, accepts that the defendant, being the child who had remained with the deceased for over two decades before her death, would have had more intimate knowledge of his mother's life than the claimants who chose to be elsewhere. As such, it is clear in this court's mind that the defendant at some point became solely responsible for the maintenance, management, and further development of the property.
- [89] Additionally, this court accepts that the defendant physically contributed to the development of the property, such actions being confirmed by his witnesses who saw him undertaking work, including renovating the main house, converting the warehouse into apartments, and making other structural improvements.
- [90] Furthermore although the claimants argued that the admission of the defendant at trial that the entirety of the proceeds of the loans obtained were not used on the property, fundamentally undermines the defendant's claim of detrimental reliance, this court finds that this contention is flawed when one considers that the property in its present state must ultimately recognize that development was undertaken or as the defendant stated in evidence that "the property exists." Additionally the fact that there may have been delays or even a lack of maintenance undertaken on the property could not support the claimant's contention that the loan proceeds were not used for the development of the property or that the defendant had no funds as alleged. This court must rather consider that the reality of property

⁴² See paragraph [7] of the defendant's witness statement.

management and improvement must follow vicissitudes of life and cannot without more amount to an entire dismissal of the defendant's contentions.

- [91] Based on the foregoing, the court finds, on a balance of probabilities that the defendant acted to his detriment in reliance on the shared understanding that he had a stake in the property. The evidence establishes that the defendant undertook significant work on the property, and while the precise amount of his financial contributions remains difficult to quantify, the court accepts that he did, in fact, expend money toward its development.
- [92] It is improbable that the defendant, having lived on the property for his entire life and having jointly secured a loan with his mother, would have idly stood by without making any financial contribution, particularly given that the loan amount borrowed is less than the value of the property, excluding land costs. This suggests that additional funds were expended on improvements, and the court accepts that some of these expenses came from the defendant's personal resources.
- [93] The court also takes into consideration the financial constraints of the deceased, who operated a small confectionery shop. The evidence established that this business went into overdraft on two occasions, requiring it to be refinanced through a mortgage secured on the property. It is apparent that the business was not yielding significant profits. Furthermore, the shop was permanently closed around 2009, at which point the apartments on the property became the primary source of income. The evidence also established that construction and development on the property continued beyond 2009, at a time when the deceased had ceased working and was eventually bedridden. These circumstances reinforce the conclusion that the defendant continued to invest financially in the property and assumed primary responsibility for its upkeep.
- [94] The defendant's continued occupation of the property is also a relevant consideration. He never relocated, remaining on the property with his mother until her passing. The claimants, in contrast, were not involved in the property's development, nor did they contribute financially or oversee any of the construction efforts. The evidence, including their own testimony, reflects that they had a strained relationship with the defendant and were largely estranged from him. They did not frequently visit the property, and their involvement in its affairs was minimal or nonexistent.
- [95] Considering all the circumstances, the court is satisfied that the defendant invested both financial resources and personal effort into the property with the expectation that he had an interest in it. The developments carried out over the years, coupled with the lack of financial contribution from the claimants, further support this conclusion. In light of these findings, the court, applying principles of equity, finds it

unconscionable for the estate to retain the full benefit of the property without recognizing the defendant's beneficial interest whether or not there can be exact calculations of that interest.

- [96] Equity does not demand exact calculations, only that there was substantial detriment suffered in reliance on the expectation of an interest. The court is satisfied that the defendant has established detrimental reliance and has, therefore, met the necessary conditions for a constructive trust. The next issue for determination is the appropriate remedy in light of the defendant's established beneficial interest.

Remedy

- [97] There is no presumption of joint beneficial ownership. Where the parties have not expressly agreed on their respective shares, the court must determine a fair division by considering the entirety of their dealings concerning the property, including any agreements regarding financial obligations and expenses.

- [98] In ***Jones v Kernott***⁴³, Lord Walker of Gestingthorpe and Baroness Hale of Richmond in paragraph [52] states the following:

“(ii) Where a family home is put into the name of one party only, the starting point is different. The first issue is whether it was intended that the other party should have any beneficial interest in the property at all. If he does, the second issue is what that interest is. There is no presumption of joint beneficial ownership, but their common intention has once again to be deduced objectively from their conduct. If the evidence shows a common intention to share beneficial ownership but does not show what shares were intended, the court will have to determine what is fair, having regard to the whole course of dealings between them in relation to the property, financial contributions being one of the relevant factors.”

- [99] Based on the entire course of dealing between the parties, the financial and non-financial contributions of the defendant, and the principles established in ***Jones v Kernott***⁴⁴, the court must determine what share of the property should be allocated to the defendant in addition to his share under the intestacy of the deceased that is fair and equitable.

- [100] In undertaking this quantification, this court must take note of the following i) the evidence supporting that the defendant was a co-investor in the property's development, maintenance, and sustainability ii) that the defendant maintained a lifelong occupation of the property, iii) that the defendant exposed himself to financial liability by being a co-borrower with the deceased, and iv) that there is uncontroverted evidence of the defendant's direct involvement in construction. Thus in making this

⁴³ [2012] 1 AC 776

⁴⁴ *Supra*

assessment based on fairness and considering the entire course of dealings between the parties, the court finds that the defendant's entire beneficial interest, that is his entitlement under the intestacy of the deceased and as to the recognition of the constructive trust should be recorded as 66% or a two thirds interest of the estate of the deceased.

[101] This percentage reflects his longstanding commitment and investment in the property while acknowledging that the deceased, as the legal owner, also had an initial financial stake. If the estate or claimants wish to retain full ownership, the defendant is entitled to a financial settlement equivalent to his 66% share, or alternatively, the property may be sold, with the proceeds distributed in accordance with this determination.

[102] The order of the court is therefore as follows:

On the Claim

1. The declaration that the claimants are the duly appointed Personal Representatives of the Estate of the late Daisy Richardson and, as such, are lawfully entitled to administer the said estate for the benefit of the beneficiaries is granted.
2. The declaration that the defendant should provide such information and produce such documents within his knowledge and/or possession pertinent to the estate of the deceased is refused save and except that the defendant shall provide any documents regarding outstanding debts or liabilities owed by the Estate to creditors of the Estate .
3. The declaration that the defendant should not interfere, whether directly or indirectly, with the administration of the said estate is granted.
4. The order that the defendant quit and vacate the property situated at Cassada Gardens made by the court on the 20th June 2024 shall continue until the final distribution of the property to the beneficiaries or the payment to the defendant of his interest as determined by this court herein stated above
5. That the defendant is to account to the claimants as the Personal Representatives of the estate of all his dealings with the Estate from the 13th September 2022 (the date of the granting of the Letters of Administration) until the order of the court of the 20th June 2024.
6. Prescribed costs to the claimants on an unvalued claim pursuant to Part 65.5 CPR 2023.

On the counterclaim

1. The declaration that the property known as Cassada Gardens and New Winthropes Block 42 1992 B Parcel 281 is held by the Estate of Daisy Richardson on trust in favour of the defendant is granted as to 33% share thereof.
2. Prescribed costs to the defendant on his counterclaim as an unvalued claim to be paid by the Estate.

Nicola Byer

High Court Judge

By the Court



Registrar