

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE**

(CIVIL)

CLAIM NO. GDAHCV2013/0336

BETWEEN:

**[1] HELEN SIMON
[2] DENIS LOUISON**

Claimants

and

**[1] RONALD HAYWOOD
[2] ALISON HAYWOOD**

Defendants

Before:

The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mr. Ian Sandy for the Claimants

Mr. Derick Sylvester with him Ms. Alicia Lawrence for the Defendants

2022: February 24;
April 8; (Closing submissions)
June 10 .

JUDGMENT

[1] **GLASGOW, J.:** The claimants bring this claim against the defendants (the Haywoods) seeking, among other reliefs, an order for possession of a two bedroom dwelling house situate at Creighton in the parish of Saint George (the property).

Claimants' case

[2] The claimants plead that

- (1) they are the siblings of Bryce Lander, deceased (Mr. Lander);
- (2) Prior to Mr. Lander's death, the first defendant, (Mr. Haywood) was Mr. Lander's tenant for approximately 18 years paying a monthly rent of \$300.00 monthly (initially for 6 months);
- (3) After Mr. Lander's death, they became the owners and landlords of the property by virtue of a deed of conveyance dated 5th October, 2012 which was recorded in the Deeds and Land Registry of Grenada in Liber 26-2012 at page 282. Mr. Haywood continued paying the monthly rent of \$300.00 as a tenant after Mr. Lander died. To date, the Haywoods have continued to occupy the property; after Mr. Lander died, the second defendant, Alison Haywood (Mrs. Haywood) requested that the rental receipts for the property be issued in the joint name of the Haywoods. Acting upon that request, the claimants' attorney's clerk issued the receipts, but was unaware that Mrs. Haywood was not a tenant of the property;
- (4) they require possession of the property for the purposes of repair and renovation. The Haywoods were informed of the same by way of letter and a notice to quit dated 18th February, 2013. The notice demanded that the Haywoods give up possession of the property on 30th April, 2013. However, notwithstanding the notice to quit, the Haywoods have remained in occupation of the property. Accordingly, the claimants claim orders for recovery of possession and mesne profits, among other reliefs.

Defence and counterclaim

[3] On 1st October 2013, the Haywoods filed a defence and counterclaim in response to the claim. In summary, they plead that:

- (1) In or about the year 1995, they leased an incomplete concrete structure forming part of the property from Mr. Lander for the monthly rent of \$300.00
- (2) Prior to Mr. Lander's death in June 2012, he agreed to sell the property to the Haywoods at a price to be negotiated after making appropriate deductions for the renovation they conducted on the property.
- (3) From about the year 1995 to present, they renovated and reconstructed the property to the extent that it is a completely different character to that initially leased to them.
- (4) Mr. Lander, during his lifetime, had always expressed to them that the premises could be rented to them for as long as they desired or until such time that they chose to purchase it.
- (5) In September 2012, they received written correspondence from Helen Simon (Ms. Simon) that she was the administratrix of Mr. Lander's estate. Further, it was only until they received further official correspondence dated 3rd October 2012 that Ms. Simon established herself as the new landlord of the property.
- (6) They deny the assertion that Mr. Lander intended to lease the property for 6 months.
- (7) It was never Mr. Lander's intention to lease the property on a short-term basis. In fact, they plead that they have remained in peaceful occupation of the property from 1995 until Mr. Lander died in June 2012.
- (8) In respect of the receipts, the Haywoods aver that they are a married couple and discussions, negotiations and/or agreements with Mr. Lander regarding the property were always jointly undertaken by them.
- (9) The mere fact that past receipts were issued in Mr. Haywood's name only is no indication that Mrs. Haywood was intended to be excluded from the agreement.

- (10) In response to paragraph 5 of the statement of claim, they are aware of the letter dated 18th February 2013. However, they aver that this letter was preceded by previous correspondences relating to the sale of the property.
- (11) By letter dated 3rd October 2012, Ms. Simon's attorneys wrote extending an invitation to the Haywoods to purchase the property. Further by letter dated 19th December 2012, the Haywoods instructed their attorney to respond to the letter indicating that they were interested in purchasing the property, subject to a valuation being conducted. However, before the valuation was executed, Ms. Simon's attorneys wrote another letter dated 3rd January 2012 (incorrectly dated) to the Haywoods indicating that Ms. Simon is willing to sell the property to them at the price of \$350,000.00. Thereafter, on 18th February 2013, Ms. Simon's attorneys wrote to the Haywoods' attorneys indicating that she wished to repair and improve the property and as such she required possession thereof.
- (12) Ms. Simon's actions subsequent to the invitation to them to purchase the property were calculated to reverse the invitation extended in the letter dated 3rd October 2012.
- (13) By letter dated 5th April 2013, the Haywoods' attorneys wrote to Ms. Simon's attorneys indicating that the Haywoods improved and renovated the property to the value of \$93,086.00. The Haywoods exhibit the valuation report prepared by building contractor, Junior Francis, in support of the value of their contributions to the build-up of the property.
- (14) They will suffer undue hardship since they have no other place to live, save and except the property and the delivery of vacant possession would lead to severe financial hardship.

- [4] In summary, the Haywoods counterclaim for declarations, among other relief, that:
- (1) Ms. Simon, as administratrix of Mr. Lander's estate, honour, and uphold an oral agreement made in or about 1995 between Mr. Lander and the Haywoods, that they would occupy the property as long as they desired or until such time that they chose to purchase same under the law of contract

and/ or in equity under the principles of constructive trust; proprietary estoppel; equitable estoppel and or unjust enrichment.

- (2) They spent the sum of \$93,086.00, from their own funds in renovating, reconstructing and improving the property.
- (3) They financially contributed the sum of \$93,086.00 to the value of the property.
- (4) They are entitled to have the first right to purchase the property pursuant to the oral agreement.

Oral Agreement to purchase the property

Ronald Haywood's evidence

- [5] Mr. Haywood in his witness statement avers that prior to Mr. Lander's death, in or around the year 2002, Mr. Lander agreed to sell the property to him at a price to be negotiated after making deductions for the renovations that they made to the property. However, it was not until September 2012, following Mr. Lander's death that Ms. Simon through her attorney-at-law sent correspondence to him concerning the sale of the property. Mr. Haywood states that in a letter dated 3rd October 2012, Ms. Simon's attorney extended an invitation to the Haywoods to purchase the property. Mr. Haywood states that the final paragraph of the letter states "*please note that if your clients wish to make an offer for the purchase of the said property, they are free to do so.*"
- [6] By letter dated 19th December 2012, Mr. Haywood states that their attorney formally replied to Ms. Simon's attorney advising that they were interested in purchasing the property, subject to a valuation being conducted. However, before a valuation could be conducted, Mr. Haywood states that Ms. Simon's attorney wrote another letter indicating that Ms. Simon was willing to sell the property for the purchase price of \$350,000.00. Thereafter, Mr. Haywood states that he received further

correspondence from Ms. Simon indicating that she wished to repair and improve the property and required possession.

Helen Simon's evidence

- [7] Ms. Simon, at paragraphs 11, 13 and 14 of her witness statement, admits that there were discussions between the parties in relation to the sale of the property. At paragraph 11, Ms. Simon states *"by letter dated 24th September 2012 the Defendants' Solicitors wrote to our Solicitor...that letter also requested an offer to purchase the Creighton property **in furtherance of negotiations between Bryce and the Defendants.**"* (Bold emphasis added). And at paragraph 13, Ms. Simon states *"by letter dated 19th December 2012 the Defendants' Solicitors indicated the Defendants interest in purchasing the Creighton property while stipulating they need a valuation of the said property."* Further, at paragraph 14 she states *"by letter dated 3 January 2013 (erroneously dated 2012) and on the instructions of the Second Named Claimant and I, our Solicitor Ms. Denise Campbell offered the property for sale to the Defendants at the price of \$350,000.00. This offer was refused by the Defendants."*
- [8] Further to the above, Mr. Haywood through his attorney wrote a letter dated 24th September 2012 to Ms. Simon's attorney requesting that Ms. Simon make an offer for the sale of the property in furtherance of negotiations between the Haywoods and Mr. Lander. Thereafter, the Haywoods expressed interest in purchasing the property and requested a valuation of the property. In reply to that letter Ms. Simon's attorney wrote to Mr. Haywood's attorney advising that Ms. Simon is willing to sell the property for the purchase price of \$350,000.00. However, the evidence suggests that those sale negotiations fell through when Ms. Simon's attorney wrote a letter together with a notice to quit requiring recovery of possession of the property in order to conduct repairs.

The Law

- [9] The law on the validity of a contract for the sale of land is well established and has been recently restated by the court of appeal in **Donald Bridgeman v HKZ Inc.**¹, where Farara JA [Ag] held:

“The essential elements of a valid contract are trite. There must be an offer, an unconditional acceptance of that offer by another person, and there must be consideration flowing from the promisor to the promisee. To give rise to a binding agreement, the contracting parties must evince an intention to create legal relations with each other. Accordingly, where there is no intention to create legal relations, a contract does not come into existence.”

- [10] In this case, the evidence reveals that the Haywoods did not accept the offer to purchase the property for \$350,000.00. Further, the evidence reveals that no consideration was passed. Therefore, there was no binding contract for the sale of the property between Ms. Simon and the Haywoods.

- [11] Moreover, the assertion that in or about 2002 Mr. Lander orally promised to sell the property to the defendants does not take matters any further. In **Donald Bridgeman**², Farara JA [Ag] held that section 4 of the **Real and Personal Property (Special Provisions) Act**³ (the Act) contains two requirements for a contract for the sale of land to be enforceable. His Lordship held that:

“It is well established so as to be trite law, that Section 4 of the Real and Personal Property (Special Provisions) Act (“the Act”) contains two requirements for a contract for sale of land to be enforceable by action before the courts. The first is that there must either be a written contract for the sale of land or some interest in land or, where the contract is oral only, some memorandum or note in writing evidencing the essential terms of the oral agreement. The second is that the memorandum or written note evidencing the essential terms of the oral contract, must be signed either by the party being charged or by someone authorised to sign it on his behalf.”

¹ GDAHCVAP2021/0011

² GDAHCVAP2021/0011

³ Cap. 273 of the 2010 Continuous Revised Edition of the Laws of Grenada

[12] Having regard to that dicta, the Haywoods were required to plead evidence of a written contract for the sale of the property. If, as asserted in this case, there was an oral agreement, the Haywoods were enjoined to produce a memorandum or note in writing evidencing the essential terms of the oral contract, which memorandum or note was signed either by Mr. Lander or by someone authorised to sign it on his behalf. The Haywoods have not produced evidence of any such memorandum or note in writing. Accordingly, there is no evidence to support the allegation of an oral agreement for sale. As such there was no binding contract for the sale of the property between Mr. Lander and Haywoods.

Proprietary estoppel

Submissions on the applicability of *Yeoman's Row Management Limited*

[13] On 19th April 2022, counsel for the claimants, Mr. Ian Sandy filed his closing submissions outside of the stipulated time. Mr. Sandy offered no explanation or reason for the late filing. This course of action has been all too commonplace in this jurisdiction. Parties are reminded of the importance of filing their closing submissions within the time directed by court's order to avoid unnecessary delay.

[14] Mr. Sandy submits that the main issue for consideration is whether the Haywoods can rely on equitable considerations to enforce a contract for the sale of the property. Counsel relies on the case of ***Yeoman's Row Management Limited and another v Cobbe***⁴. The claimants argue that in the context of this case, this court should not entertain the arguments on constructive/resulting trusts, equitable/proprietary estoppel, and unjust enrichment advanced by the Haywoods since the main issue for the court is whether there is an oral contract for the sale of land.

⁴ [2008] UKHL 55 or [2008] 4 All ER 713

[15] Further, counsel argues that the Haywoods cannot invoke equitable remedies to enforce an agreement for the sale of the property as the law bars it. Counsel submits that the court cannot make the declarations and relief sought by the Haywoods in the counterclaim as there is no written contract. Moreover, counsel submits that the court cannot grant relief claimed by the defendants at paragraph 5 of the counterclaim because those reliefs are all statute barred under the **Limitation of Actions Act**⁵.

[16] Counsel for the Haywoods, Mr. Derick Sylvester, in his closing submissions submits in reply that **Yeoman** is inapplicable and can be distinguished. Counsel submits that the facts of that case concerned the issue of fraudulent misrepresentation and as such the claim of propriety estoppel failed.

Discussion and Analysis

[17] My assessment of **Yeoman**⁶, is that the court in that case was mainly tasked with determining whether an oral agreement for the sale and development of land which provided for further negotiations after the grant of planning permission was enforceable using equitable principle including propriety estoppel, constructive trust etc. In that case, the House of Lords found that the agreement was a contingent one, in that the claimant's expectation was not to gain "*a certain interest in land*", but an expectation "*that the outstanding contractual terms would be agreed and incorporated into a formal written agreement which would include the agreed core financial terms and that his purchase and development of the property would follow.*"

[18] Mr. Sandy submits that, the dicta in **Yeoman** frontally excludes the Haywoods from relying on the equitable doctrine of proprietary estoppel to enforce a contract for the sale of land. In **Yeoman** Lord Scott of Foscote stated:

⁵ Cap. 173 of the 2010 Continuous Revised Edition of the Laws of Grenada.

⁶ [2008] 4 All ER 713

“The question arises, therefore, whether a complete agreement for the acquisition of an interest in land that does not comply with the s 2 prescribed formalities, but would be specifically enforceable if it did, can become enforceable via the route of proprietary estoppel...My present view, however, is that proprietary estoppel cannot be prayed in aid in order to render enforceable an agreement that statute has declared to be void⁷.”

[19] I agree with the opinion of the court in **Yeoman** that the equitable doctrine of proprietary estoppel cannot be pleaded to enforce an oral agreement for the sale of land in light of section 4 of the Act. However, I am of the view that a fair reading of the pleadings and evidence in this case reveal that the Haywoods assert a claim for proprietary estoppel which, in my view, is not contingent on the oral agreement for the sale of the property. The Haywoods have asserted that Mr. Lander promised or assured them that *“we could stay here as long as we liked because he did not intend on living there in the future⁸”*. The Haywoods at paragraph 2 (v) of their defence and counterclaim plead that *“the Deceased, during his lifetime, had always expressed to the Defendants that the demised premises could be rented to them for as long as they desired, or alternatively, until such time that they chose to purchase same.”*

[20] I am of the view that a fair reading of the pleadings in the defence and counterclaim, the evidence and the submissions reveal the following issues:

- (1) Whether there was an oral agreement between Mr. Lander and the Haywoods, for them to purchase the property at a later date. I have already found above that there was no such oral agreement or more appropriately that there is no evidence of such an agreement as stipulated by section 4 of the Act;
- (2) Whether Mr. Lander verbally assured the Haywoods or by his conduct allowed the Haywoods to believe that they could remain on the property indefinitely or in the alternative until they desired to purchase same.

⁷ Ibid at para. 29

⁸ Paragraph 4(a) of Witness statement of Ronald Haywood. See also paragraph 2(v) of the Defence and declarations 1 and 2 of the Counterclaim

- [21] For the reasons to follow, I am of the view that the principles distilled by the House of Lords in **Yeoman** are not applicable to the facts of this case.

The law on proprietary estoppel

- [22] The doctrine of proprietary estoppel is well established and has been considered over a long line of authorities. In respect of the ingredients of the doctrine of proprietary estoppel, the House of Lords in **Yeoman's Row Management Ltd and another v Cobbe**⁹, restated the principles and held that:

“The ingredients for a proprietary estoppel should include, in principle, a proprietary claim made by a claimant and an answer to that claim based on some fact, or some point of mixed fact and law, that the person against whom the claim was made could be estopped from asserting. It was established that if A under an expectation created or encouraged by B that A should have a certain interest in land, thereafter, on the faith of such expectation and with the knowledge of B and without objection by him, acted to his detriment in connection with such land, a court of equity would compel B to give effect to such expectation..”

- [23] In **Walsh v Ward and others**¹⁰, a Caribbean Court of Justice decision, Byron P held:

“The doctrine of proprietary estoppel was based on three main elements: a representation or assurance made to the claimant that he would have a certain interest in land; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance. The representation had to be clear and unequivocal, made by the party against whom the estoppel was asserted and assuring the other of a certain interest in the property claimed.”

⁹ [2008] 4 All ER 713

¹⁰ (2015) 87 WIR 101

Summary of evidence at trial

Claimants' submissions on the evidence

- [24] Mr. Sandy submits that at trial, Ms. Simon stated that she could not give any evidence of any agreement between Mr. Lander and the Haywoods for the purchase of the property. Mr. Sandy submits that Ms. Simon testified that there may have been discussions regarding the sale, but confirmed that she was not present when those discussions took place. Counsel submits that Ms. Simon did not know of any agreement between the Haywoods and Mr. Lander after they rented the property.
- [25] Further, in relation to Mr. Haywood's evidence, counsel recites the fact that Mr. Haywood said that discussions between himself and Mr. Lander took place on a Wednesday and no one else was party to the discussion. Counsel recounts that Mr. Haywood disagreed with his suggestions that there was no agreement to renovate and reconstruct the house. However, counsel says that Mr. Haywood admitted that the agreement was not reduced into writing. In respect of Ms. Haywood's evidence, counsel indicates that Ms. Haywood could not remember much about the negotiations and discussions with Mr. Lander. Counsel recounts that Ms. Haywood stated that it was Mr. Haywood who participated in those discussions with Mr. Lander.

Defendants' submissions on the evidence

- [26] Mr. Sylvester recalls that Ms. Simon agreed in cross-examination that she was not aware of any discussion or agreement with Mr. Lander and the Haywoods in relation to the property. Ms. Simon's involvement with the property was subsequent to the death of the deceased in 2012. In relation to Mr. Haywood's evidence, Mr. Sylvester states that Mr. Haywood maintains that it was the representation or agreement he relied on with the deceased that he can occupy the property, improve it and he would eventually own it. Counsel recounts Ms. Haywood's assertion that the Haywoods relied on the representation and expended money to repair both pre and post-

hurricane Ivan. Further, Mr. Junior Francis, the Haywoods' witness was able to confirm that some of the repairs were done by him. Mr. Francis estimated other repairs and provided a report based on his experience as contractor.

Discussion and Analysis

- [27] In respect of the Haywoods' posture on reliance and detriment, Mr. Haywood's witness statement presents the following evidence:

At paragraph 26:

"We have expended numerous sums of money over the years on the subjected property in reliance on the agreement with the deceased for the sale of the property to us. Thus, it is unjust to demand that we vacate the said property which we have renovated and reconstructed to the extent that it is of a completely different character to that before our occupation"

And at paragraph 27:

"My wife and I, having expended ourselves in great proportions to create a comfortable, safe home for our family, insist on being compensated for our contributions in the sum of at least \$93,086.00."

- [28] In my assessment, the circumstances of this case and the assurance relied on are somewhat peculiarly different from the facts in most of the authorities. Mr. Lander assured the Haywoods that they could remain on the property indefinitely or until such time as they were prepared to purchase it. This assurance was not an outright gift, but gave them a right to reside there indefinitely or purchase the same on condition that they continued to improve and maintain it. It is evident that the Haywoods relied on that assurance. They proceeded to improve the property and made it into their family home where they raised their children. In essence, the Haywoods argue that they were not tenants *simpliciter*, but have an equitable interest in the property.

- [29] Further, the evidence reveals that the payment of rent also formed part of the oral assurance. Mr. Haywood at paragraph 8 of his witness statement stated that: *“the deceased, during his lifetime, had always expressed to us that the subject property could be rented for as long as we desired or alternatively, until such time that we chose to purchase same.”*
- [30] This is supported by the Haywoods pleading at paragraph 2(ii) of the defence that *“it was agreed between the defendants and the deceased that the demised premises would command a monthly rent of three hundred dollars (\$300.00)”*. The Haywoods by their conduct have honoured this agreement by paying the monthly rent of \$300.00 over the years until the institution of this claim. They have also satisfied me that they maintained the property and made substantial improvements to it.
- [31] Mr. Lander by his conduct in allowing the Haywoods to repair and renovate the property over the years acquiesced to these improvements. The case law suggests that proprietary estoppel can arise from conduct and acquiescence. In **Fisher v Brooker**¹¹ Lord Neuberger stated *“the classic example of proprietary estoppel, standing by whilst one’s neighbour builds on one’s land believing it to be his property, can be characterised as acquiescence - see per Oliver J in Taylor Fashions Ltd v Liverpool Victoria Trustees Ltd (Note) [1982] QB 133, 151.”*
- [32] I am of the view that in view of the conduct of the Haywoods as discussed above further to the assurance made by Mr. Lander, the Haywoods should be allowed to continue to reside in the property paying the monthly rent of \$300.00 until an agreement for the purchase of the same is finalised. Further, I am of the view that the claimants are estopped in equity from asserting their rights to claim possession of the property. Accordingly, the claimant’s claim for recovery of possession is refused.

Remedy

¹¹ [2009] UKHL 41 at paragraph 62

[33] In determining the appropriate remedy to honour the assurance or promise given, the authorities suggest that the court must have regard to all the circumstances to achieve the “minimum equity”. The Privy Council in **Henry and another v Henry**¹² stated that:

“In *Campbell v Griffin* [2001] EWCA Civ 990, (2001) 82 P & CR D43, Lord Walker (Robert Walker LJ, as he then was), when considering the issue as to how the equity which had been found to have arisen in that case should be satisfied, described the court's approach to that issue as a cautious one. The court had to look at all the circumstances in order to achieve the minimum equity to do justice to the claimant. However, he went on to observe (as he also observed in his judgment in *Gillett v Holt*) that the court enjoys a wide discretion in satisfying an equity arising under the doctrine of proprietary estoppel.”

[34] The Court continued at paragraph 53 of the judgment that:

“In the instant case the judge should have undertaken a similar weighing process to that undertaken by Lord Walker in *Campbell v Griffin*; that is to say, he should have weighed any disadvantages which Calixtus Henry had suffered by reason of his reliance on Geraldine Pierre's promises against any countervailing advantages which he had enjoyed by reason of that reliance.”

[35] Accordingly, this court is tasked with determining the “minimum equity” that would achieve a fair and equitable outcome further to the assurance given by weighing the advantages enjoyed and disadvantages suffered by the defendants.

Advantages enjoyed by the defendants

[36] In respect of advantages, the Haywoods have enjoyed paying a modest rent in the sum of \$300.00 for over 17 years until they stopped paying rent some time subsequent to Mr. Lander's death and the claimants' claim for recovery of possession.

¹² (2010) 75 WIR 254 at paragraph 52

Disadvantages suffered by the defendants

- [37] The Haywoods have lived in the property from around 1995 to present, that is over 27 years and to their detriment have acted on the assurance given by Mr. Lander that they can live and remain on the property indefinitely with an option to purchase at a later date. Acting on that assurance, they entered the property and have expended monies over the years to develop and improve the same. The Haywoods state that they have expended \$93,086.00 over the years in improving and renovating the property. Most of values attached to those improvements have not been controverted by the claimants, save and except the claimants' challenge to the amounts claimed in the estimates. This challenge does not carry much weight since Ms. Simon admits at trial that she was not aware of any assurances made by Mr. Lander in relation to the property or what was done by the Haywoods in furtherance of that assurance.
- [38] With respect to Haywoods' claim for yard maintenance and landscaping in the sum of \$45,000.00, while I am satisfied that on a balance of probabilities the Haywoods may have incurred some expense in maintaining the yard, I find that in the absence of evidence proving this loss, the sum of \$45,000.00 seems exorbitant and unreasonable. It is trite that the court may make a nominal award of damages where the evidence adduced to prove loss is scant. Blenman JA in Court of Appeal case of the **Attorney General of Grenada v Muhammed Ehsan**¹³, stated at paragraph 122 of the judgment that: *"it is well-established that the judge, in seeking to award compensation, must pay particular regard to the evidence that was adduced. Where the evidence is scant or non-existent to support an award of compensation or damages, the judge is usually able to make a nominal award so as to vindicate the person's rights."* I am certain that the Haywoods did improve the property and expended their own money to do so. , I am of the view that this loss ought to be attract a nominal value of about \$15,000.00.

¹³ GDAHCVAP2019/0020

[39] The case law suggests that “*detriment need not consist of the expenditure of money or other quantifiable financial detriment, so long as it is something substantial. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances*¹⁴.” While the Haywoods were not able to provide evidence as the exact sums expended on the improvements, the court was assisted with unconverted evidence of the substantial works carried out at the residence. These works would have gone a long way in increasing the value of the property. All in all my assessment is that the Haywoods’ improvements to the property over the years have increased its value by 40%.

Mesne Profits

[40] The claimants in their statement of claim also asked mesne profits. It is not disputed that the Haywoods ceased paying the agreed monthly rent of \$300.00 after the claim was instituted in 2013. Therefore, the Haywoods shall pay all arrears of rent of \$300.00 monthly from the date of the filing of the claim (21st June 2013) to date of trial in the sum of \$31,200.00.

Conclusion

[41] For all these reasons, the claimants’ claim is refused and the defendants counterclaim is granted as follows:

- (1) The claimants’ claim for recovery of possession of the property together with dwelling house thereon situate at Creighton (also known as Parade) in the parish of Saint George (“the property”) is refused.
- (2) The Haywoods shall pay to the claimants’ mesne profits from the date of filing of the claim to the date of trial in the sum of \$31,200.00.

¹⁴ Gillet v Holt [2000] 2 All ER 289 at page 307-308 as applied by the Privy Council in Henry and another v Henry (2010) 75 WIR 254 at para. 38

- (3) The defendants are entitled to remain in possession of the property until such time as an agreement for sale is concluded. They will continue to be responsible for the property's upkeep, maintenance and improvements. They will continue to pay the monthly rent of \$300.00 until a purchase agreement is concluded.
- (4) The Haywoods are assessed to have contributed to the improvement of the property and thereby increased its value by 40%.
- (5) The property shall be valued by Joseph John and Associates within 60 days of today's date. The costs of the valuation shall be borne jointly by the parties.
- (6) The purchase price for the property shall be determined as follows:
 - i. The value of the property contained in the valuation report shall form the basis for the purchase price of the property;
 - ii. The Haywoods' 40% contribution to the improvement of the property shall be first deducted from that value;
 - iii. Thereafter, all applicable sale and transfer taxes shall also be deducted from that value. The property transfer tax shall be apportioned 60% to the claimants and 40% to the Haywoods;
 - iv. The net value (after the above deductions) shall constitute the purchase price of the property.
- (7) Upon receipt of the valuation, the Haywoods shall purchase the property within 16 months of receipt of the valuation at the purchase price herein set out above.
- (8) If the Haywoods do not purchase the property as stipulated above within 16 months receipt of the valuation, they are to give up vacant possession of the property to the claimants;
- (9) The Haywoods shall not give up possession until the claimants pay them a sum equal to 40% of the value of the property which 40% is to represent the value of their improvement to the property;
If the claimants do not pay the sum equal to the 40% value of the property within 2 months of the date that it is due, the property shall be placed on

the market for sale and shall be advertised with a recognised real estate agent/ company.

(10) When the property is sold, all applicable taxes, fees and other costs associated with the sale shall be deducted from its proceeds. Thereafter, the Haywoods shall be paid 40% of the net proceeds of sale and the remaining 60% of the net proceeds of sale shall be divided among the claimants equally.

(11) The claimants shall pay costs to the Haywoods in the sum of \$3,500.00.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar