

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

Antigua and Barbuda

Claim No: ANUHCV 2019/0247

BETWEEN:

BERTYL ERICSON WESTE

Claimant

and

CLAUDETTE ANTHONY

JUDITH ANTHONY BAPTISTE

SHERIDTH BAPTISTE

Defendants

APPEARANCES:

Kivinee Knight-Edwards of counsel for the Claimant

Neileen Murdoch of counsel for the Defendants

2021: July 5th

November 29th

DECISION

- [1] **Drysdale J:** This matter is a claim for vacant possession of a parcel of land registered as Registration Quarter: Five Islands Block and Parcel No. 54 1690D 56 (hereinafter “the Property”).

BACKGROUND

- [2] The Claimant's case is that he was bequeathed the Property by his mother Naomi Weste (hereinafter The Deceased) by virtue of her Last Will and Testament dated 17th November 2011 (hereinafter the Second Will). Accordingly, upon the death of the Deceased the Property was lawfully passed to him and he was subsequently registered as owner of the same.

[3] Sometime in 2018 he caused a notice to quit to be issued the Defendants. However, they have failed to quit and deliver up the Property. By virtue of his ownership of the Property he is entitled to vacant possession and mesne profits for the continued unlawful occupation by the Defendants.

[4] The Defendants filed a defence asserting that the Deceased by her words and conduct conveyed to the First Defendant the Property thereby giving rise to a claim in proprietary estoppel. Accordingly, the Claimant who claims an entitlement from the Deceased is hereby bound as the Deceased was bound by proprietary estoppel.

[5] The Defendants counterclaimed that the Deceased gave the First Defendant an irrevocable licence over the Property entitling the First Defendant to be registered as the owner of the Property. They therefore seek an order for the rectification of the land register to that effect. The Defendants have therefore utilised the doctrine of proprietary estoppel as both a defence and a claim.

The Claimant's Statement of Claim

[6] The Claimant is the half-brother of the First Defendant, the uncle of the Second Defendant and the grand uncle of the Third Defendant. The Claimant inherited the Property from the Deceased who prior to her death was the sole owner of the Property. He has been registered as the sole owner of the Property.

[7] The First Defendant approached the Deceased in or about 1991 for the purpose of securing a place for the Second Defendant to live. It was agreed between the Deceased and the First Defendant that a temporary wooden structure would be constructed on the Property.

[8] The Deceased utilised the Property as collateral to secure a loan for the First Defendant to assist in the cost of the construction of the house. The First and Second Defendants were responsible for making the loan payments which they completed in 2004.

[9] Sometime in or about 2010 the Second Defendant relocated to the United States and the Third Defendant, and her daughter continued in the occupation of the Property.

[10] The Deceased at all material times intended that Property would continue to belong to her as evidenced by her continuing to pay the required property taxes through the years.

- [11] The Deceased also after much effort was able to retrieve her land certificate from the First Defendant who without her authority had intercepted the same from her attorney upon completion of the payment of the loan.

The Defence and Counter Claim

- [12] The Defendants readily admit the familial relation and the fact that the Claimant is the registered owner of the Property. The Defendants however deny that the Claimant is entitled to vacant possession. They contend that the Deceased sometime in 1988 openly declared in the presence of friends and family that the Property would be given to the First Defendant upon her death. That in addition to declaring this intention, the Deceased in 1988 gave instructions for the preparation of a will in which she bequeathed the Property to the First Defendant (hereinafter the First Will). Thereafter she gave the First Defendant a copy of the First Will for her safe keeping thereby confirming her intention that the First Defendant would become the owner of the Property upon her demise.
- [13] In 1991 the First Defendant discussed with the Deceased her intention to construct a dwelling house on the Property with the Second Defendant. The house was always meant to be a permanent home for the Second Defendant. The Deceased gave verbal and written consent for the permanent structure to be constructed. Additionally, she co-signed the charge for the Property to be used as collateral for two construction loans which the First and Second Defendants obtained for the house.
- [14] The Defendants describe the house as a two-bedroom one bathroom house which is built partly in wood and partly in concrete, but which sits entirely upon a concrete foundation. They assert construction was facilitated by a loan from Barclays Bank. They readily admit the Claimant's assertion that they completed payment the loan secured for the construction of the house sometime in 2004. They allege that in addition to repaying the loan that throughout the years they expended additional sums for the upkeep, maintenance and enhancement of the Property thereby increasing its value.
- [15] When the house was constructed, the Claimant did not reside on island and as such, he was not in a position to know the facts or the circumstances under which the house was built.
- [16] The Defendants admit that the Second Defendant migrated sometime in 2010 but states that the Third Defendant who grew up on the Property has continued to reside there, this being the only home she has ever known.

- [17] The Defendants deny the version of events surrounding the retrieval and return of the land certificate. They however confirm that the land certificate was returned in order to keep the peace which peace was disturbed directly by the Claimant who had influenced the Deceased to such an extent that he caused her to act in a manner that was not previously consistent with her character.
- [18] The Defendants deny that the Deceased paid all the land taxes. Instead, they suggest that the Deceased, because it was her clear and stated intention to give the Property to the First Defendant specifically requested that the First Defendant pay the various property taxes. However as the Property was still in the name of the Deceased all payments made continued to reflect her name although they were made by the First Defendant. They further allege that they paid all land taxes until 2012. They suggest that when they went to pay for 2013 a double payment had been made in 2012 which they attributed to the Claimant. Thereafter they ceased making payments because of actions of the Claimant.
- [19] They conclude by reiterating that they are justified in failing to give vacant possession as the Deceased by her words and actions gave the First Defendant an irrevocable licence over the Property which entitles the First Defendant to be the registered owner. Further the size and construction of the house is such that it cannot be removed without doing substantial damage to the structure thereby causing loss and damage. With respect to the Counter Claim the Defendant rely on their defence and have reiterated the essential points of their alleged entitlement.

The Reply and Defence to Counter Claim

- [20] The Claimant reiterated the assertion that the Deceased had at all material times intended that a temporary wooden structure was to be constructed on the Property and that she did not give her consent for anything else.
- [21] The Claimant acknowledged living abroad when the house was constructed but denied being unaware of the decisions and developments on island. He avers that he kept in frequent contact with his parents and would provide for them from Canada. He maintained that the Deceased had informed him that the Second Defendant was in dire need of a place to live and that was the reason for allowing her to build a wooden structure on the land.
- [22] The Claimant advocated that in 1998 he requested that the Deceased and his father came to Canada to assist him in raising his daughter. That upon arrival the Deceased informed him that the First Defendant two weeks prior to her departure from Antigua had forced her to execute the First Will in which she bequeathed her the Property.

- [23] The Claimant accepts that the Deceased signed a loan guarantee for the construction of a house but maintains that this was for a wooden structure and not a permanent structure as alleged by the Defendants. He asserted that the Deceased repeatedly told him that the structure was to be a wooden structure and further that the Defendants wanted to take her land from her.
- [24] The Claimant denied that the Defendants made any payments for property taxes and instead stated that it was he who annually attended the offices to make such payments for the Deceased and other family members who were overseas. He asserted that the Deceased was well provided for by himself and therefore at all material times had money to pay the property taxes.
- [25] The Claimant asserted that whilst he had no knowledge of why the Deceased changed the First Will it was his belief that this was due to the various instances of lack of concern and repeated utterances that the Defendants were trying to take her land which propelled her to do so.
- [26] Finally, the Claimant asserted that the Second Will was read in the presence of the First Defendant and at no time has she ever contested the same.

The Claimant's Case

- [27] The Claimant's evidence in chief was consistent with his pleaded case. However, on cross examination the Claimant modified his position that he maintained his parents whilst he lived in Canada insisting that this was a typographical error. In place of this he now suggested that the true scenario was that he sent money for his parents. Later, on further cross examination he was noted as now stating that he occasionally sent money for his mother.
- [28] The Claimant also contended that the Deceased always confided in him. When questioned on why this was never mentioned in his evidence in chief the Claimant suggested that he couldn't recall that this wasn't mentioned. Nonetheless the Claimant submitted that for that reason he was personally aware that permission was only granted to construct a temporary structure. Further that the First Defendant forced their mother to execute the First Will in her favour which will the Deceased gave to the First Defendant. When questioned about the reason why these details were not mentioned in his evidence in chief the Claimant answered that he did not believe that it was necessary.
- [29] The Claimant admitted that although the Deceased told him that she gave the First and Second Defendants permission to build a house on the Property that

she never informed him that she had given the First Defendant the land certificate.

- [30] The Claimant asserted that the Deceased continued to pay the property taxes herself from her own monies. He admitted however that he had presented no receipts prior to 2004 to support this contention.
- [31] The Claimant suggested that the Deceased was a strong willed and independent woman. However, when asked what the Deceased did when she observed that the Property was being built in concrete, the Claimant admitted to being unaware and suggested that the Deceased only complained about it.
- [32] The Claimant's case was also supported by one other witness in the person of Pauline Vouzan. The evidence of that witness was confined to her expressing that the Claimant financially maintained both of his parents and a proclamation that the Deceased was unhappy about the manner in which the Property was being maintained. The witness however quickly resiled from the position that that the Claimant financially maintained his parents instead proffering that she was aware that the Claimant sometimes sent money for the Deceased.
- [33] Counsel for the Claimant in support of this case argued that there being no evidence to the contrary that the Second Will is the Last Will and Testament of the Deceased. Further that Defendants and their witnesses all understood and admitted under cross examination that a will only demonstrated an intention of the Deceased and that the Deceased was free to change her will any time before her death. That the Deceased was also free to do as she pleased, she being the owner of the Property. Therefore, counsel submits that the Second Will revoked the former and that there was no evidence that this was done by mistake or otherwise.
- [34] Counsel further argues that the First Defendant was present at the reading of the Second Will and yet did nothing to challenge the contents or establish a proprietary interest until the filing of these proceedings. Moreover, that the Defendants have failed to establish that the Second Will of the Deceased was obtained through coercion. Therefore, the notice to quit issued after the registration of his ownership of the Property is valid and effectively terminated the Defendants licence to occupy the Property. Consequently, the Claimant is entitled to vacant possession of the Property.

The Defendants case

- [35] Like the Claimant the First and Second Defendants evidence in chief were consistent with their pleaded case¹. On cross examination the First Defendant admitted to being present at the reading of the Second Will but taking no steps to challenge the Second Will. She suggested that this was because she did not know about anything about this. She admitted to now learning that a will could be revoked prior to death. She also admitted to being unaware that the Deceased had executed the Second Will.
- [36] She admitted that the Deceased had purchased property before and would have sought legal advice on how to transfer property. She denied that the Deceased knew how to transfer property but again asserted that the Deceased would have sought legal advice. She admitted however that the Deceased did not transfer the Property to her.
- [37] The First Defendant admitted that she had failed to present any documentation to demonstrate that she had taken charge over the property. She also admitted that she had not produced any documentation to show that she built the Property or that she obtained DCA approval for the Property to be in concrete.
- [38] The Second Defendant like the First Defendant also admitted that she understood that a person could change a will prior to death. She however claimed that she was unaware that the Deceased in fact had made any changes to the First Will.
- [39] Likewise, she admitted to not providing any documentation to demonstrate the payment of the loan or architectural drawing demonstrating that the Property was to be put in concrete from the start.
- [40] She submitted that she no longer resided on island when the Second Will was read and as such could not do anything legally to challenge the same.
- [41] The Defendants in addition to their various witness statements provided evidence of two additional witnesses, one being a cousin and the other a long-time friend of the Deceased. Both of these witnesses attested to being aware of inter alia certain pronouncements made by the Deceased as it related to the Property.
- [42] The first witness in support came in the person of Alliston Lewis. The witness was the nephew of the Deceased. He deposed that after the death of his

¹ No witness statement was filed for the Third Defendant, whom from the facts though now an adult was during the construction of the house the minor child of the Second Defendant and who has been sued as a party as she is in occupation of the Property.

mother, the Deceased raised him for several years and hence became a mother to him. As such he maintained a close relationship with the Deceased, visiting her continually and having discussions on a variety of issues. Part of those discussions included what her intentions were regarding her properties. The Deceased told him that she had two properties and had intended to give the Property to the First Defendant and a second property to the Claimant.

- [43] He was aware that when the Claimant was residing in Canada that the Deceased gave the First Defendant permission to build on the Property which as she had always stated was her intention that the First Defendant be given the same. He always understood from the Deceased's statements made to him, that the Property was to be the First Defendant's land.
- [44] The Deceased visited the house during construction and was involved in what was happening. Furthermore, the Deceased regularly visited with the First Defendant at the house after it was built on the Property. The Deceased knew that the house was being by the First and Second Defendants and at no time had any issues with it.
- [45] After the return of the Claimant to the island, that the Deceased confided in him that the Claimant had wanted the land certificate to the Property to sell it. She stated however that the Claimant couldn't do so as the Property belonged to the First Defendant.
- [46] He admitted to not being aware that the Deceased had made a First Will which was subsequently changed. He admitted that he understood that a will demonstrated an intention, and that intention could change at any time. Aside from this, his evidence remained largely unchallenged.
- [47] The second witness was Ursula Matthews. She deposed that she was the long-time friend and confidant of over 45 years of the Deceased. Because of this she was treated as a family member and was present for many discussions concerning the Property. That the nature and strength of their relationship never changed although she eventually relocated from Antigua as they remained in constant contact and that they also visited each other throughout the years.
- [48] She was aware that the Deceased trusted the First Defendant, and for many years had her name on all her financial accounts. That the First Defendant was also authorized to conduct any business for or on her behalf that she was not able to do herself.
- [49] From discussions with the Deceased, she knew that she had two parcels of land, one at Golden Grove and the other at Cassada Gardens. That the land at

Golden Grove was for the First Defendant and the other property was for the Claimant.

- [50] That when she was still resident in Antigua, she visited the Deceased every Saturday, and they would talk and eat black pudding. That during one of those Saturday visits in 1991 the First Defendant told the Deceased that she wanted to build a house on the Property for the Second Defendant. The Deceased told the First Defendant that she agreed as the Property was hers. At that point the Deceased then retrieved the title deed and gave it to the First Defendant. The Deceased and the First Defendant also had a discussion on the plans for the house and the fact that this was to be a permanent building for the Second Defendant. Also discussed was the payment of the construction of the building which it was agreed would be the responsibility of the First and Second Defendants.
- [51] That throughout the entirety of their friendship which lasted until the death of the Deceased, she never raised any issue of the land or its ownership.
- [52] She was aware that the reason the Deceased and her then husband went to Canada was to try to obtain residency. In light of this the Deceased took steps to put her business affairs in order which included the making of the First Will in which she stated her intention about the two parcels of land she owned.
- [53] She disputed that the Claimant cared for his parents financially and instead expressed that it was the Deceased who routinely sent money for the Claimant whilst he resided in Canada. She stated that those moneys were to assist the Claimant with living expenses and for the construction of his house. Several years later when the Claimant was engaged in divorce proceedings from his wife in Canada, the Deceased had to send documentary evidence of her having provided him with moneys to construct the matrimonial home. That the Claimant never maintained the Deceased and or his parents as his father was always gainfully employed and provided well for his family.
- [54] On cross examination the witness admitted that she left Antigua in 1990 but that she was back and forth between Antigua and St. Thomas. She insisted that although she was not present when the house was being built, she was there for the conversations about the building as well as when the Deceased and the First Defendant went to the bank to secure the loan.
- [55] She explained that she was not aware whether the Deceased had transferred the Property to the First Defendant but reiterated that the Deceased had repeatedly stated that she would give the Property to the First Defendant.

- [56] That she was present regarding discussions about the house and knew that the structure would be partly wood and partly wall, the bathroom and kitchen being in concrete and the remainder being in wood.

Analysis of the Evidence

- [57] Having examined the totality of the evidence as well as the countenance and demeanour of the witnesses I unhesitatingly prefer the evidence of the Defendants which I found to be more truthful, forthright and reliable. In contrast I found the Claimant to be persistently economical with the truth. The Claimant attempted to attribute his claim of maintaining his parents to a typographical error and instead posited that the true scenario was that he sent money for his parents. Later, on further cross examination he was noted as now suggesting that he sent money occasionally for his mother alone. A far cry from all his numerous assertions of being the financial provider for the Deceased. At first blush this may not seem significant, but the Claimant continually insisted that the Deceased was able to and continued to pay the property taxes as she was well provided for by himself. Notwithstanding this the Claimant admittedly was unable to provide any receipts for the payment of taxes prior to 2004. This is in the context of him asserting that every year he would pay the property taxes for the Deceased and other relatives. This evidence was particularly important as it related to the credibility of the Claimant as every exaggeration of the truth once detected destroys credibility and makes all further statements suspect.
- [58] In any event, even if I were to disregard my unfavourable opinion of the Claimant his evidence is clearly wanting. The Claimant was not present when any of the transactions for the building of the house or the securing of the loan was done. He seemed to have been informed after the fact. Furthermore, I am not convinced that the Deceased informed him of every detail concerning these matters as was evidenced by the Claimant's admission to being unaware that the Deceased had not informed him that she had given the land certificate to the First Defendant. Clearly if she did as the Claimant suggests and was unhappy about the construction, the Claimant being as he alleged of having a close loving relationship with his mother would have on his numerous visits to the island taken more definitive and prompt action to remedy this alleged wrong or at least encouraged the Deceased to take some form of action legal or otherwise. Instead, the Claimant apart for allegedly hearing the Deceased continually complain did nothing for an excess of twenty years until her death when he thereafter sent the Defendants a notice to quit.
- [59] I note further that the Claimant by his own words indicated that the Deceased was kind but very independent and strong willed. Again, if I am to accept the Claimant's assertion that the Deceased throughout her lifetime was a proverbial

tower of strength then the obvious and logical conclusion is that when she made the First Will that she did so on her own volition. Further, the decision to allow the First and Second Defendants to build on the Property was also with her approval. Given this I would find it hard to believe that the Deceased would not be aware of precisely the nature of the house to be built on the Property. Further that if the house was being constructed as a permanent structure contrary to her wishes that she would have helplessly sat by and simply complained about it.

[60] In addition to the above, the witness for the Claimant provided no material evidence concerning the issues at the core of this matter. The statement that the Deceased was unhappy of the way the house was being maintained is of no moment as it does not establish that the Deceased disagreed with the structure that was being built or unaware of the fact that it was a permanent structure. Maintenance relates simply to the upkeep of the Property. This witness provided no evidence of discussions or transactions concerning inter alia the construction of the house. Save to confirm that the Claimant was not the provider that he initially suggested that he was for the Deceased her evidence is of no consequence to this matter.

[61] In contrast the Defendants in addition to their various witness statements provided evidence of two additional persons, being a long-time friend of the Deceased and the other a cousin who attested to being aware of certain pronouncements made by the Deceased. I was particularly impressed with these two witnesses as despite their respective ages of 87 and 73 were impressive in their mental acuity and whose evidence could not be shaken on cross examination. Also, important aspects of their evidence in chief were not substantially challenged and that evidence vastly disputed the version of events as set out by the Claimant. The evidence of these witnesses more importantly corroborated the Defendants pleadings and evidence on the Deceased's actions and involvement with the First and Second Defendants dealing with the land and the construction of the house on the Property and the Deceased repeated statements that she considered the Property to be that of the First Defendant. All in all, both witnesses were unassailable.

ISSUES

[62] Having considered the pleadings, the evidence and submissions the issues extrapolated for consideration are as follows:

- i. Whether the Defendant has any equitable interest in the Property?
- ii. What are the appropriate remedies?

ANALYSIS AND THE LAW

Whether the Defendant has any equitable interest in the Property?

[63] Notwithstanding that the Claimant is registered as owner of the Property, the Registered Land Act provides that registration vests in a person title but subject to certain overriding interests which are not registered against the property. The relevant sections being 23 and 28 are enunciated hereunder:

23. 'Subject to the provisions of section 27 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever...

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register:

28. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register-...

(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed.'

[64] The Defendants argue that they have an unregistered equitable interest in the Property thereby defeating the Claimant's attempt to evict them from the Property.

[65] The doctrine of proprietary estoppel is a peculiar doctrine in that it can be utilised as a sword or shield to either found or claim or as a defence to proceedings. In this case it is used to do both.

[66] The doctrine is based on three main elements being a clear representation or assurance made to the affected party, reliance on it and detriment suffered as a direct consequence of such reliance. The recent case of **Rawlings v**

Chapam² more particularly summarised the elements of proprietary estoppel as follows:

'i) A proprietary estoppel arises where

a) the owner of land induces encourages or allows the claimant to believe that she has or will enjoy some right over the owner's property;

b) in reliance on this belief, the claimant acts to her detriment to the knowledge of the owner;

c) the owner then seeks to take unconscionable advantage of the claim by denying her the right or benefit which she expected to receive.

ii) Whilst it is convenient to examine these three elements as separate components, in fact they often interrelate and "the court must look at the matter in the round" (*Gillett v Holt* [\[2001\] Ch 210 at 225](#)).

iii) There need be no promise of a specific right or identification of specific land, provided the promise is "clear enough" in the circumstances (*Thorner v Major* [\[2009\] UKHL 18](#)).

iv) The belief of the claimant that she would obtain an interest in the property regardless of whether or not the owner meant to encourage that belief may found an equity but only where such belief was reasonable in the circumstances (*Thorner v Major*).

v) The court has a discretion as to how any equity found should be satisfied, and does not necessarily do so by satisfying the terms of any promise found to have been made. The essence of the jurisdiction is to avoid an unconscionable result, and the court may conclude that it would not be unconscionable to renege on a promise if some lesser form of relief (such as monetary compensation for any detriment suffered) is given to the claimant. There was of course substantial disagreement as to whether that was appropriate in this case.

vi) In considering what detriment the claimant has suffered, the court must take into account any countervailing benefits that she has received, such as residing in the owner's property rent free.

² [2015] EWCH 3160 (Ch)

vii) The claimant need not have acted in sole reliance on the promises made, as long as they formed a substantial element of her motivation. If it is shown that the claimant has in fact acted to her detriment and was encouraged to do so by the owner, the court will readily infer that she did so in reliance on his promise. However if it is shown that the claimant would have acted as she did in any event, no equity will arise.'

- [67] These principles are examined in the context of the evidence before this Court. As previously indicated, I believe the evidence as presented by the Defendants as opposed to that of the Claimant. Therefore, I believe that the Deceased repeatedly made statements to and or in the presence of the First Defendant and others to the effect that the Property would belong to the First Defendant. For that reason, she executed the First Will to that effect and gave that will to the First Defendant confirming her intention that the Property would eventually become her own.
- [68] In reliance of that clear and unambiguous representation that the Property would become hers the First Defendant sought the consent of the Deceased to construct a house on the Property. The Deceased allowed and supported the First and Second Defendants in obtaining a loan and expending monies on the construction of the house, which loan all parties agree the Defendants fully paid over a period of 14 years.
- [69] The Deceased also visited the Property and was involved in the construction of the house and therefore was aptly aware that the house was not a chattel house but a permanent structure affixed to the Property. She allowed the Defendants to continue investing in the Property by maintaining and improving it for decades without raising any issue. Also the Deceased by her actions actively encouraged the First Defendant in believing that the Property would belong to her upon her death.
- [70] Even after the Deceased some 20 years later changed the First Will that fact was never communicated to the First Defendant thereby leaving an impression that the First Will in her possession continued to reflect her intentions on her demise.
- [71] The First Defendant acted to her detriment by relying on the representations and active encouragement of the Deceased by expending considerable sums to construct and maintain the house all in the honest belief that she had a vested interest in the Property. It would therefore be unconscionable to allow the Deceased to resile from her promise in the circumstances.

[72] I am strengthened in my view having taken cognisance of the case of **Henry v Henry**³ which case bares great similarity to the case at bar. The facts of that case are as follows:

‘The dispute concerns an undivided half interest in a piece of land ("the Land") held by Geraldine Pierre, now deceased. During her lifetime, Geraldine Pierre granted the appellant's grandmother permission to build on the Land, where she lived with the appellant for some 30 or 40 years until her death. The appellant has continued to live on the land. Geraldine Pierre promised to leave the Land to the appellant on her death on the condition that he continue to work the land. The appellant continued, not only to work the land, but to look after Geraldine Pierre. Shortly before her death in 1999, Geraldine Pierre sold her undivided half interest in the Land to the first respondent. The appellant claimed to be the rightful owner and/or to have an overriding interest in the Land and sought, among other things, a declaration to that effect. The claim was dismissed, against which decision the appellant appealed.’

[73] In allowing the appeal the Court found the essential ingredients of proprietary estoppel had been established for it was shown that it would have been unconscionable for Geraldine Pierre to be allowed to act contrary to the promise made, on the faith of which, the appellant had acted to his detriment by continuing to work the land.

[74] Therefore, having considered all of the evidence and the law I find that the claim of proprietary estoppel has been made out.

What is the appropriate remedy?

[75] The First Defendant having established the existence of equity I am now tasked with the responsibility of determining how this equity is to be satisfied. The Court of Appeal in the case of **Randolph M Howard v Aubrey Monroe**⁴ Barrow JA found that ‘[i]n a straightforward case where there was a specific promise of a definite interest the extent of the equity will be clear and the relief will usually simply be to enforce the promise.’ Having regard to all of the circumstances it is my considered opinion that equity demands that the expressed representations of the Deceased for

³ [2008] ECSCJ No. 117, note that the findings on proprietary estoppel was confirmed by the Privy Council in this matter however the issue of the appropriate remedy alone was set aside see [2010] UKPC 3

⁴ Civil Appeal 4 of 2006

the past 20 years be honoured by vesting the Property in the First Defendant.

ORDER

[76] In light of the above the order of the Court is as follows:

- i. The First Defendant is hereby declared to be the owner of the property registered as Registration Quarter: Five Islands Block and Parcel No. 54 1690D 56.
- ii. The Registrar of Lands shall register the First Defendant as the owner of the property with absolute title.
- iii. The Claimant shall pay the Defendants prescribed costs.

Jan Drysdale

High Court Judge

By The Court

Registrar