

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0083

BETWEEN

ANITA HUNTE

CLAIMANT

AND

JAMES HUNTE

DEFENDANT

Appearances:

Ms. Rochelle Forde for the Claimant

Mr. Ronald Marks with Mrs. Patricia Marks-Minors for the Defendant

2021: 25th May
8th July

JUDGMENT

Byer, J.:

- [1] This litigation between father and daughter reached before the court when the claimant filed a claim against her father, the defendant. This court, in an attempt to salvage the parental relationship sent this matter to mediation but the parties failing to come to an agreement there, insisted that this court was to make the determination on the matter.

Background

- [2] The defendant is the legal owner of a parcel of land situate at Friendship Bay, Bequia by virtue of Deed of Conveyance bearing registration number 1307 of 1998 (hereinafter referred to as “the Property”).
- [3] The claimant asserts that around the year 2009, the defendant made certain promises to the claimant to the effect that, if the claimant agreed to assist in the construction and repairs of the Property:
- a. the claimant would have an interest in the Property;

b. the Property would be vested absolutely in the claimant but subject to the life interest of the defendant;

c. the downstairs portion of the said property would be for the exclusive use and control of the claimant and her family and the upstairs portion would be for the exclusive use, occupation and control of the defendant, which could be rented and the rent collected would be for the exclusive use and benefit of the defendant; and

d. The claimant would be a co-mortgagor on a loan to effect the construction and repairs to the Property.

- [4] The claimant asserts that she relied on the said promises and carried out the construction and repair work on the lower portions of the Property and bore the financial cost of same. Further, the claimant co-signed as mortgagor under Deed of Mortgage 875 of 2010. The sums released under this mortgage were used to pay for the materials, which were necessary to effect the repairs to the upper portion of the property. The claimant made contributions towards the repayment of the mortgage in the sum of \$7,863.00. The claimant asserts that she also worked physically on both the upper and lower portions of the Property by carrying blocks and shoveling sand and assisting in the design. She also asserts that she was able to secure workmen to assist in the construction work, free of cost, as a result of her good relations with them.
- [5] The claimant maintains that she utilized her life savings in the sum of \$35,309.12 to effect construction to the downstairs portion of the property, transforming it from a foundation structure filled only with dirt, to a two-bedroom apartment with a bathroom, living room, kitchen and veranda.
- [6] The claimant then left her rental accommodation and moved into the Property where she peacefully enjoyed the lower portion of the property until June-July 2014.
- [7] By letter dated 24 July 2014, the defendant purported to evict the claimant from the Property, offering the sum of \$9,256.00 as compensation.
- [8] The claimant responded to the defendant's letter by letter dated 31 July 2014 indicating that she would leave only if, she was adequately compensated for her interest in the Property.
- [9] The defendant sent multiple letters subsequently purporting to evict the claimant and disrupted the claimant's quiet enjoyment of the Property through various acts, aimed at forcing the claimant out of the Property. The defendant has also put the Property on the market for sale.
- [10] The defendant, by his Amended Defence filed on 20 January 2017 alleges that he never made the promises alleged by the claimant, and that he only agreed to allow the claimant to remain in the Property for a specific period of time. That period was purportedly to be the equivalent to the rent she would have expended if she had to secure alternative accommodation, in exchange for the claimant effecting repairs on the Property.

- [11] The defendant also denies that the claimant was a co-mortgagor on the loan for the purpose of effecting repairs to the property, but was joined on his bank account in order to grant the claimant access to the account in order to make deposits at the request and instructions of the defendant.
- [12] At paragraph 15 of the Amended Defence filed on 20 January 2017, the defendant indicated that he does not deny that the claimant has a financial interest in the property and that various attempts were made to reach an agreed quantum in respect of that interest.
- [13] The claimant has therefore sought the following reliefs against the defendant:
- i. That the defendant is estopped from:
 - a. claiming both the full legal and beneficial interest in the property situate in Friendship Bay, Bequia and bearing number 1307 of 1998.
 - b. removing the claimant from the said property.
 - ii. A declaration that a constructive trust was created in favour of the claimant, as a result of direct payments made by the claimant, as co-mortgagor, pursuant to an Indenture of Mortgage bearing registration number 875 of 2010 for the construction and repairs to the said property.
 - iii. A declaration that the claimant be entitled to remain in the said property based on the strength of the promises by the defendant to the claimant that the property would be vested absolutely in the claimant upon the death of the defendant if the claimant were to invest in the said property and which the claimant so invested to her detriment.
 - iv. A declaration that the claimant is entitled to an interest to be determined or assessed by the Court in the said property.
 - v. An order that the said property be valued by a valuator agreed to by the parties or in the alternative by a Court appointed valuator.
 - vi. An order that the said property be vested in the claimant subject to the life interest of the defendant.
 - vii. An order that the status quo is maintained and the claimant be permitted to remain in the said property pending the outcome of the claim herein.
 - viii. An injunction to restrain the defendant from selling or disposing of the said property described in Deed bearing registration number 1307 of 1998.
 - ix. An injunction to restrain the defendant whether by himself, his servants and/or agents or howsoever from interfering with the claimant's quiet enjoyment of the said property.
 - x. Damages.
 - xi. Interest.
 - xii. Further or other reliefs.

xiii. Costs.

- [14] At the trial of the matter it became clear to the court, that although the claimant had pleaded her relief in both constructive trust and proprietary estoppel that the factual matrix that emerged from the evidence gave rise in this court's mind as to whether the relief of proprietary estoppel was available to the claimant.
- [15] Therefore, for this court the sole issue became whether the claimant had established her case under the doctrine of proprietary estoppel and if she had so proven her case, what relief she was ultimately entitled to in the circumstances.
- [16] For the avoidance of doubt, this court accepts that the claimant was not involved in the acquisition of the property the subject matter of this action by the defendant. The claimant came to her father's property after it was acquired and on the defendant's own evidence, utilized her money in the improvement of the same, the only point of dispute then arises as to what that understanding was that led to the use of her money.

Has the claimant established a right under the doctrine of proprietary estoppel?

The Claimant's Submissions

- [17] On this issue, the claimant submits that it was without a doubt that the claimant invested her life savings into the improvement and completion of the downstairs of her father's home. She also invested her time and money into the renovations that were undertaken to the upper portion of the home when she not only signed as co-mortgagor but also made payments of her own money to the loan and sourced not only labour but also used her own labour in the completion of both the upstairs and the downstairs.
- [18] The claimant submitted that this was done due to the express statements of the defendant that she would obtain an interest in the home of the defendant upon his death. It is that 100% interest that the claimant therefore submits she is entitled to as it would be unconscionable now to allow the defendant to renege on his agreement which would effectively leave the claimant wholly vulnerable with nowhere to live and no funds to support a move.
- [19] The claimant further submitted that the detriment that she has suffered outweighs any possible advantages that she may have obtained and therefore she should be entitled to the prayers sought in this regard.

The Defendant's Submissions

- [20] The defendant's only submission on this issue was that as far as the defendant is concerned the claimant has failed to satisfy the three elements of proprietary estoppel.
- [21] The defendant submitted that there was no representation made by the defendant that was certain and firm and effective. Any assurance that the claimant has stated was nebulous and unsure and more importantly may have created some intention in the future. In the defendant's submissions,

this was far from effective and in fact could not amount to an assurance, which the claimant could have relied on.

- [22] With regard to the issue of reliance and detriment suffered, the defendant submitted that neither of these exists from the manner in which the claimant conducted herself. The defendant submitted that the claimant used the money obtained from the loan to improve the downstairs, not her own money. That the defendant was the one who repaid the loan and finally she has had the benefit of rent-free premises for the last 11 years, which amounted to an excess of \$75,000.00, which she saved, as a result of occupying the said accommodations. Therefore, far from suffering, any detriment or relying on any promise, the claimant, in the submission of the defendant, has benefitted and gained from her occupation of the defendant's home and that benefit needs to come to an end and the claimant's case be dismissed.

Court's Considerations and Analysis

- [23] Before this court delves into the gravamen of this issue, I wish to address the argument and pleading raised by the claimant on the relief of constructive trust.
- [24] Although it can be readily agreed that the imposition of a constructive trust is not limited to the period at which the property was acquired, it will also be readily agreed that this is the most usual occurrence that would lead to that inference being relied upon and a declaration being made to that effect.
- [25] The two main elements of the finding of a constructive trust are i) that there was a common intention that both parties would have a beneficial interest in the property acquired and ii) that the claimant acted to their detriment, based on that common intention. Thus it is, that circumstances that would give rise to the implication of the nature of a constructive trust are where before legal rights are settled in terms of ownership, the parties come to an agreement as to the manner in which the property is to be held. It is then conveyed to one party, usually for ease, but with the express knowledge that the other party has either made direct or indirect contributions to the acquisition, to their detriment. However, as Denning LJ noted in the case of **Hussey v Palmer**¹ "by whatever name it is described, it is a trust imposed by law whenever justice and good conscience require, it is a liberal process founded on large principles of equity to be applied in cases where the defendant cannot conscientiously keep the property for himself alone but ought to allow another to have a share in it. The trust may arise at the outset when the property is acquired or later as the circumstances may require. It is an equitable remedy by which the court can enable an aggrieved party to obtain restitution...just as a person who pays part of the purchase price acquires an equitable interest in the house so does he, when he pays for an extension to be added to it."
- [26] It is therefore clear that the finding of the existence of a constructive trust is a finding that must be made, where it would certainly be inequitable for the legal owner to deny the interest of an individual who can prove not only that they made contributions to the property of the legal owner

¹ [1972] 3 All ER 744 at 747

but did so on representations that had been made and did so to their detriment. So too is proprietary estoppel. However, the latter doctrine is a “flexible one whose purpose is to prevent the unconscionability of allowing a property owner to assert his strict property rights against another who has acted to his detriment in reliance on the mistaken belief acquiesced or encouraged by the property owner that he has rights over the property in question.”²

- [27] However in the case of **Stack v Dowden**³ the distinction was clearly made when the court held “I have to say that I am now rather less enthusiastic about the notion that proprietary estoppel and “common interest” constructive trusts can or should be completely assimilated. Proprietary estoppel typically consists of asserting an equitable claim against the conscience of the “true owner”. The claim is a mere equity. It is to be satisfied by the minimum award necessary to do justice..., which may sometimes lead to no more than a monetary award. A “common intention” constructive trust by contrast is identifying the true beneficial owner or owners and the size of their beneficial interests.”
- [28] In the case at bar, this court is satisfied that this factual matrix is better suited in all the circumstances, to examine whether the claimant has met the requirements of the doctrine of proprietary estoppel especially as this principle can in fact give rise to the creation of new rights as opposed to simply declaring what if any beneficial ownership there may be. In these circumstances, I am therefore satisfied that this claim, should be considered based on this principle and if found that the court can in fact be more flexible in its approach.
- [29] That being said, the claimant has to prove, three fundamental elements in order to succeed on a claim for proprietary estoppel, these are that there was a promise or assurance by the defendant to the claimant, that the claimant relying on that promise, then took some action that was to his detriment. As the court in the case of **Wilmot v Barber**⁴ stated it, “What are these matters of fact that have to be considered? Firstly, the claimant must have made a mistake as to his/her legal rights; secondly the claimant must have expended some money or must have done some act on the faith of the mistaken belief; thirdly that the defendant who is the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the claimant. If he does not know of it he is in the same position of the claimant and the doctrine is founded upon conduct with a knowledge of your legal rights; fourthly, the defendant must know of the claimant’s mistaken belief of his rights and finally the possessor of the legal right must have encouraged the claimant to spend money or to undertake other acts either directly or by abstaining from asserting his legal right.”
- [30] In order to consider whether these elements have been met, the court is required to assess the evidence that was led at trial. I will do so taking each aspect of the doctrine in turn.

² The Law of Contract (Common Law Series) Chapter 2.129

³ [2007] UKHL 17 at para 37 per Lord Walker

⁴ (1880) 15Ch D 96 at 105

The Assurance/Promise

[31] The claimant in her evidence in chief in seeking to establish that a promise had been made to her said the following:

“5. On or about the late part of 2009, my father the defendant, who had for several years not spoken or communicated with me, approached me and made several promises to me as it related to said property, on condition that I agree to assist in the construction and repairs of the said property.

6. The defendant my father promised me that I would have an interest in the property and that I would become the sole owner of the property subject to his life interest.

7. My father also promised me that the downstairs of the said property would be for me and my family’s exclusive use and occupation and that the said downstairs portion would be under my control. As part of the agreement my family and I would live downstairs. It was agreed that the upstairs portion of the said property would be for the exclusive use occupation and control of my father which could be rented and the rent collected would be for the exclusive use and benefit of the defendant.”

[32] At trial, this arrangement as stated there was reiterated by the claimant and her evidence in this regard remained unshakeable.

[33] In support of this contention, the claimant brought a witness Lloyd Penniston. Although Mr. Penniston originally had indicated on his witness statement that he had been present when the defendant told the claimant that the house was hers, at trial he made it clear that even if he had not been present on those occasions, certainly during the times that he worked on the house with the defendant, the defendant had made it clear to him personally, that the property was for the claimant. In fact, he stated that the claimant had said, “The property was Anita’s own as no one else had come to help him except Anita”⁵.

[34] The claimant’s other witness Mr. Elson Lampkin, a professed good friend of the claimant also stated that the defendant, when things had been good with the claimant had told him that he was working on the house for his daughter during times that they were “reasoning”.

[35] The defendant on the other hand purported to portray an entirely different scenario as to how the claimant came to be living on the property. His version is contained in his witness statement⁶ as follows:

“1. In or about 2010, my daughter, Anita Hunte (hereinafter referred as “the Claimant”) was living at Level in Bequia in a rented apartment. My wife Yvette Hunte with whom I produced three (3) children including the Claimant, asked me to allow the Claimant to live in the downstairs of my

⁵ Evidence elicited at trial on the 25/5/2021

⁶ Filed 4/4/2017

property at Friendship Bequia because she could not afford the rent where she was presently staying.

3. I told the Claimant that I would allow her to live in the downstairs for two (2) years until she got back on her feet. I told her that the windows, doors, electrical and tiles were to be installed and the walls needed to be plastered and painted. I informed her that I will assist with the materials to plaster the walls and she can solicit assistance in terms of workmanship.

4. The agreement was that she will complete the downstairs to make it liveable [sic] and she can live there rent free for two (2) years since my purpose for building the Apartments was mainly to bring in extra cash since I am getting older and plying my trade as a fisherman would eventually become too hard for me.

5. On the 12 March 2010, I borrowed a loan from the RBTT Bank Caribbean Limited in the sum of Thirty-Two Thousand Dollars (\$32,000.00) by virtue of Deed of Mortgage Number 875/2010. The loan was taken out on my account number 140100000042 and I told the Claimant that I will add her to the Mortgage since she will be making payments in my behalf, since I would be unable to travel to St. Vincent every month as I am usually at sea most of the time. I gave the Claimant my bank book and told her that I will give her the mortgage amount each month to put in the bank book.”

[36] In cross-examination, he however went on to say that when it came to asking the claimant to leave the house, the decision had been made on the fact that the claimant and her then boyfriend Lloyd Penniston were disrespectful to him. In fact in response to questions on cross examination he told the court, “I would agree that if they are disrespecting me they are not taking care of me ...I decided she had to leave the property...it is that disrespect is the real reason I wanted her out of my place...”⁷

[37] In fact when this court analyses this and juxtaposes that with the pleading of the defendant in his defence where he stated:

“The Defendant categorically denies that he ever promised the Claimant that the property would be vested absolutely in the Claimant subject to his life interest... Since the Defendant has other children who would be entitled to have an interest in the said property, which said interest he determines by their interest in his well-being as he ages.”⁸, it became abundantly clear to the court that the defendant’s action in seeking to displace the claimant was less of a denial of a promise made to her and rather a stance taken that she had been disrespectful to him. The claimant having failed to “look after her father” was now to be punished.

[38] However, in order for the representation to operate as an estoppel, it must be found that the “representation [was] clear and unequivocal, it, must be intended to be acted on, and it must be in fact acted on. When I say it must be “intended to be acted on”, I would add that a man must be taken to intend what a reasonable person would understand him to intend. In short, the

⁷ Evidence elicited at trial of the matter 25/5/2021

⁸ Paragraph 4 of the Amended Defence filed 20/1/2017 at page 50 of Trial Bundle

representation must be made in such circumstances as to convey an **invitation** to act on it.”⁹ (**My emphasis added**)

- [39] When this court considers the evidence in this regard, this court has found, that having seen the claimant and her witnesses and the defendant as they gave evidence, that it prefers the version of events as given by the claimant. The claimant struck the court as a witness of truth while the defendant by his demeanor and the answers to the questions on cross-examination came across to the court that the position that he was taking was out of pure hostility to the claimant and therefore led him to attempt to be less than candid with the court.
- [40] In any event this court finds that on a balance of probabilities that the claimant was contacted by the defendant through her mother, after having no contact with him for an extended period of time to get the assistance of the claimant to join him in obtaining a mortgage at the RBTT Bank Caribbean Limited on the assurance that she could build up the downstairs and she would be given the property with a life interest to him. I accept that in fact there was an invitation to act on the part of the defendant extended to the claimant.
- [41] It was certainly an insult to the intelligence of the court, the proposition proffered by the defendant that the only reason that the claimant would have been joined as co-mortgagor was simply to facilitate her making deposits to the mortgage on his behalf.
- [42] Rather, this court accepts that the defendant would have had to make the proposition worthwhile for the claimant to expose herself to the legal implication of joining in a mortgage and as such, the promise of the transfer to the claimant of the legal title to the property was in fact made to the claimant.
- [43] This court also accepts that in fact it was only upon the advent of the claimant “no longer caring for the defendant” that the defendant then took the present position of not having made the promise at all.

Reliance

- [44] The claimant must also show that based on the promise or assurance she relied on the same and took steps to act on the promise.
- [45] The court having accepted that the promise extended had been that the claimant having joined as co-mortgager was given permission to build up the downstairs to live and that she would be entitled to the property subject to a life interest in the defendant, this court must now examine whether the claimant took any steps on that promise.
- [46] From all the evidence advanced, including that from the defendant on cross-examination, contrary to the contention made by the defendant, this court accepts and finds that the claimant without a doubt acted upon the promise made to her. This court finds that the claimant became co-mortgagor with the defendant, that this claimant expended monies and built up the downstairs of her father’s

⁹**Sidney Bolsom Investment Trust Ltd v E Karmios & Co (London) Ltd** [1956] 1 All ER 536 at 539 per Denning LJ

home to the point where the defendant could tell the court that “where she is living, I do not have keys and never had keys to that portion of the house.” A statement when duly considered is indeed telling.

- [47] In this court’s mind, that one sentence sums up the clear position that the claimant was invited to act and did so act and the defendant was aware that she was so acting. However, what needs to be considered is that reliance and detriment are often intertwined. In the case of **Henry v Henry**, Sir Jonathan Parker stated; “As to the relationship between reliance and detriment in the context of the doctrine of proprietary estoppel, just as the inquiry as to reliance falls to be made in the context of the nature and quality of the particular assurances which are said to form the basis of the estoppel, so the inquiry as to detriment falls to be made in the context of the nature and quality of the particular conduct or course of conduct adopted by the claimant in reliance on those assurances. Thus, notwithstanding that reliance and detriment may, in the abstract, be regarded as different concepts, in applying the principles of proprietary estoppel they are often intertwined.”¹⁰

Detriment

- [48] “There is no doubt that for proprietary estoppel to arise the person claiming must have incurred some expenditure or otherwise have prejudiced himself or acted to his detriment.”¹¹
- [49] So, for the claimant to satisfy this element, it is therefore necessary for her to satisfy this court that any actions that she relies on as having been taken, did in fact result in detriment being suffered by her. Of course, all of this must be considered within the “fundamental principle [that] equity is concerned to prevent unconscionable conduct [which] permeates all of the elements of the doctrine; in the end the court must look at the matter in the round.”¹²
- [50] There is, however, no yardstick as to how much detriment is “sufficient detriment” but what is clear is that it must be more than just trivial¹³. The test that is therefore to be applied must be “whether it appears unjust or inequitable that the representor should not be allowed to resile from his representation having regard to what the representee has done or refrained from doing in reliance on the representation.”¹⁴
- [51] Having said so, to make such a determination, this court will be required to assess the evidence led in this regard by the claimant.
- [52] The claimant’s evidence was largely contained in the witness statement filed on her behalf¹⁵:
- “8. Based on the promises made by my father the defendant, I worked physically on both the upper and downstairs portions of the said property – having carried blocks, shoveled sand and assisted in the designs of both the upstairs and downstairs portions [sic] of the said property.

¹⁰ At paragraph 55

¹¹ Per Dunn LJ in **Greasley v Cook** [1980] 3 All ER 710

¹² **Henry v Henry** Supra at paragraph 37

¹³ **Jones v Watkins and ors** 26/11/87 CA UK (unreported)

¹⁴ **Jones v Watkins and anr** Ibid

¹⁵ Filed 31/3/17

9. I was also was able to secure the aid of workmen to assist in the completion of the said property at a reduced cost. I was able to secure the assistance of several tradesmen who specialize in the area of masonry, plumbing and electrical installation respectively and also many unskilled workers to give of their time for no pay. I would only have to give these workers food and drinks, in return for the work done to repair and construct the said property. These workers assisted me because of the good relationships I enjoy with them as friends in the community. As a result of my efforts in securing the assistance of my friends, the value of the said property has significantly appreciated for which I am solely responsible.

10. Additionally, I also used up all of my life savings, in the sum of **\$35,309.12** to effect substantial construction to the **downstairs portion** of the said property, transforming it from a foundation structure filled only with dirt, to a two- bedroom apartment with bathroom, living room, kitchen and veranda. The value of the said apartment as at 22nd day of June 2015 is \$72,800.00.

11. I also uprooted myself and my family, left my rental accommodation where I was paying bills with no difficulties, and moved in to the said property.

12. Further I co-signed on a mortgage with the Defendant for a loan to pay for materials to effect repairs to the **upper portion** of the said property, and which said loan bears registration number 875 of 2010. I made contributions towards its repayment in the sum of **\$7,863.00.**"

[53] In cross-examination despite a valiant attempt to shake the claimant, this court accepts that the evidence of the claimant once again remained unshaken.

[54] Thus in essence the evidence of the claimant was that: 1) she physically worked on the construction/renovations of the upper and lower portions of the house; 2) that she used her ties of friendship to have her friends who were tradesmen to provide their services at a reduced cost; 3) that she used her savings to purchase materials and pay for the construction of the downstairs; 4) that she was a co-signatory on a mortgage to obtain funds for the construction of the upstairs to which she personally made over \$7,000.00 in loan payments and 5) that she uprooted her family to move to take up residence in her father's house investing all she had in the same.

[55] It is however clear that the facts upon which the claimant relies as amounting to detriment, the court is required to compare any advantages a party may have received to any detriment that they allege that they have suffered¹⁶. It is therefore when this exercise is conducted that it can then be considered whether the requirement of detriment has been met.

[56] In the case at bar, this court accepts that the only advantage that the claimant enjoyed was the occupation of rent-free premises for the period that she has been in occupation.

[57] In contrast, the court finds that the detriments suffered by the claimant were:

¹⁶ **Henry v Henry** Supra

i) that she physically worked on the construction and used her friends to work on the house. This is in fact supported by the defendant's own evidence in cross-examination¹⁷. The defendant told the court *"I know that Anita got people to do the electrical and the plumbing, her boy friend did the plumbing. She got people to put in the doors and the windows. ...the work downstairs was done on weekend- she did it piece piece - the tradesmen who worked downstairs was self help...it was Anita who got Wellington to help, I did not pay Wellington, everybody do self help."* There was also the evidence of Elson Lampkin who told the court in cross-examination¹⁸, *"I did not charge Anita Hunte for the work. I did that as a favour for her we are all friends. I dug two pits for this property...the father was not the one who I dealt with for the money...it was Anita who paid me the money ...it was Anita who got in touch with me."*

ii) that she used her monies to pay for the downstairs. The contention of the defendant by way of cross examining the claimant and in his submissions was that the claimant had used the monies from the loan to pay for the downstairs, however the very evidence of the defendant again belied this contention. At trial he had this to say *"she spent money on the property...I did encourage Anita to spend her money- she invested in the downstairs [but] I did not tell her that if she invest in the downstairs that the property was for her...the mortgage that was taken was for the repairs to the upstairs"*. Further in examination in chief the defendant in stating that there was an agreement that the claimant would only have stayed for two years had this to say *"I told the claimant that the agreement was that she would stay in the downstairs rent free for two (2) years as a set off for the work done to complete the downstairs ..."* There would certainly be no need for set off, if this money had come from the loan which is the contention of the defendant, and which he ultimately paid off on his own.

iii) that she became a co-signatory to the mortgage taken over the said property and made loan payments to the same of her own money. It was not disputed by the claimant that the defendant was the person who paid off the loan. This event took place after she had already moved into the downstairs of the house the same having been completed. Additionally, it was of some note to the court that the defendant was unable to produce any financial information as to the payments that he made even after he had taken possession of the loan account book from the claimant. Further, he also admitted in evidence that *"when I took Anita to the bank she was working at the time."* The defendant stated that he was not aware that the claimant had made payments, but the claimant's evidence as to the payments she had made remained uncontradicted and the court accepts that she had made payments from her own money to the account. In fact, when the exhibit AH3 to the witness statement of the claimant is examined, the payments that were attributed to the claimant save and except an initial payment of \$1,500.00 by the claimant, no other payment was in that amount but the evidence did show that the claimant made sporadic payments of lesser sums over the course of the loan.

¹⁷ At trial on the 25/5/2021

¹⁸ At trial on the 25/5/2021

iv) that the claimant moved her family to the house and made it her home to the exclusion of the defendant. The defendant in fact told the court that *“where she is living – I do not have keys and never had keys for that portion of the house...she was to live downstairs and I was to have control of the upstairs”*.

- [58] In assessing the sole benefit as against the acts that this court accepts were to the detriment of the claimant, this court also accepts that the final element has also been satisfied and that the claimant acted to her detriment on the promise held out to her by the defendant. I further accept that the arrangement between the claimant and the defendant was more than a mere “act of kindness”¹⁹ by the defendant and that there certainly was no agreement that it would span a period of two years.
- [59] So, as the Privy Council in **Henry v Henry**²⁰ stated once the equity has been determined to exist the next step must be to consider the extent of that equity. In doing so, this exercise must be approached cautiously and the “court [has] to look at all the circumstances in order to achieve the minimum equity to do justice to the claimant”.
- [60] In the case at bar, the court has only been provided with the value of the portion of the building that was constructed by the claimant. This was contained in the jointly instructed valuation of Franklyn Evans²¹ in which level 1 (the portion occupied by the claimant and constructed by her) amounted to seventy two thousand eight hundred dollars (\$72,800.00). Although this court accepts that the rent-free accommodation enjoyed by the claimant did not extinguish her equity, which is valued at the above sum, this court cannot find that the minimum equity would be to transfer the entire property to the claimant to satisfy her claim. In fact, as Walker LJ stated in the case of **Campbell v Griffin**²² that although there has been the recognition of equity in favour of a claimant, there must also be a finding that is not disproportionate to the claim as found. In this case at bar, having found that the claimant has established her equity, and that it is primarily concerned to only a portion of the house, the entirety of the relief as prayed must be denied.
- [61] However additionally since the court is given the ability to apply a flexible approach, I find that the claimant is entitled to a life interest in the property at Friendship Bay, Bequia bearing registration number 1307 of 1998. Pursuant to such life interest, she is to continue to occupy the lower portion of the Property unmolested by the defendant. However if, the defendant shall seek to undertake an *inter vivos* divesting of the property before the cessation of the life interest of the claimant, the sum of \$72,800.00 shall exist as a charge on the said property and must be paid to the claimant upon such disposition. Any disposition of the property at the death of the defendant shall also be subject to the life interest of the claimant.
- [62] It was indeed disheartening that the claimant and the defendant were unable to salvage a relationship of parent and child over this matter and this court sincerely hopes that with the

¹⁹ **Elaine Knowles v George Knowles as Executor and Beneficiary of the Estate of Oliver Knowles deceased** Privy Council Appeal No 28/2007

²⁰ Supra paragraph 52

²¹ Exhibit AH2 to the Witness Statement of the claimant filed 31/3/2017

²² [2001] EWCA Civ 990

determination of this matter that the parties can move forward and repair the damage. Blood ties are forever, land cannot go with you to the great beyond. There must come a time when priorities are examined and what is important becomes apparent.

The order of the court is therefore as follows:

1. The prayer that the defendant is to be estopped from claiming both the legal and beneficial interest in the property at Friendship Bay, Bequia is granted and the claimant is given a life interest in the said property and she is at liberty to occupy the lower portion of the said property.
2. The prayer that the defendant is to be estopped from removing the claimant from the property is granted.
3. A declaration that a constructive trust was created in favour of the claimant is denied.
4. The declaration that the claimant be entitled to remain on the property is granted by virtue of the declaration of a life interest in the said property in favour of the claimant.
5. A declaration that the claimant is entitled to an interest to be determined by the court is denied.
6. An order that the said property to be valued, is denied.
7. An order that the said property is to be vested in the claimant subject to a life interest in favour of the defendant is denied.
8. An order that the claimant be allowed to remain in the said property pending the hearing of this matter is denied.
9. An injunction to restrain the defendant from selling the said property is denied. However, any disposition of the said property is to be carried out in accordance with the determinations in paragraph 61 above.
10. An injunction to restrain the defendant, his servants or agents from interfering with the quiet enjoyment of the claimant in the property is granted and the defendant is so restrained.
11. No order as to damages.
12. Costs to the claimant on an unvalued claim pursuant to Part 65.5 CPR 2000.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar