

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

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

CLAIM NO.: SLUHCV2019/0035

BETWEEN:

THEODORA JAMES

Claimant

and

FRANCIS MONTOUTE

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Ms. Mertle John for the Claimant

Mr. Anwar Brice for the Defendant

2019: December 4;
December 20, 24; (Written submissions)
2020: August 25.

JUDGMENT

Background

- [1] **CENAC-PHULGENCE, J:** By this claim, the claimant, Theodora James ("Ms. James") seeks a declaration that she is the owner in equity entitled to possession of a house situate on land registered as Block and Parcel 1626B 248 in Dugard, Micoud ("the house"), which the defendant, Francis Montoute ("Mr. Montoute") holds on trust for her. Alternatively, if Mr. Montoute is entitled to an interest in the house, Ms. James seeks an order that she compensate him to the extent of such interest. She further seeks orders restraining Mr. Montoute, whether by himself or his servant

or agents, from entering or interfering with the house or land, from disconnecting or instructing disconnection of water and electricity supply to the house, or from selling, conveying, transferring or otherwise disposing of the house or purchasing the land on which it is situate.

The Claim

- [2] Ms. James' case is that she and Mr. Montoute were at the material time in a 7-year relationship, during which they cohabited with each other, and in or about 2014, discussed purchasing a house together. She later learnt that the house, which is situated on her family land, she being an heir to the estate of Doxon, Doxey, Claw et al, was for sale. She states that the house was being sold for \$10,000.00, however she discussed the purchase price with the vendor, Cosmas Rigobert also known as Cosmas Hugobert ("Mr. Rigobert"), who accepted her offer of \$5,000.00 on the basis that she was a friend of his. In late 2015, Mr. Montoute purchased the house in her absence, with the receipt/sale agreement bearing his name only. She alleges, however, that Mr. Montoute bought the house for her on her birthday and presented her with the receipt of purchase indicating that he had purchased it for her as her birthday present. From that date, he promised her that the house was hers.
- [3] Ms. James states that she relied on his representations and acted to her detriment by contributing to the renovation of the house, the loan repayments, and taking responsibility for utilities, food and household goods as well as the upkeep of the house. Ms. James states that she, Mr. Montoute and her daughter moved into the house in December 2017 after the renovations were completed. However, in April 2018, their relationship broke down and Mr. Montoute moved out of the house, whilst she continued to live there. Thereafter, she entered discussions to purchase Mr. Montoute's interest in the house, however, he has refused and denied her contributions to the house. She continues to offer to do so, particularly as the house is located on her family land to which she says she is entitled to a share on partition and the house is immovable property. She states that Mr. Montoute has had the

electricity supply to the house disconnected, which she has temporarily had reconnected; claims to be the legal owner of the land of which she has no knowledge since she has not given consent for the sale of her portion of her family land; and has stated his intention to evict her.

- [4] She states that by virtue of her contribution to the purchase price by obtaining the discount, and to renovation of the house, which she did in reliance on his representations, Mr. Montoute is estopped from denying her interest in the house, which he holds on trust for her.

The Defence

- [5] Mr. Montoute denies that Ms. James holds a beneficial or any interest in the house and claims to be the sole owner of the house. He denies that he was merely a contributor to the purchase price and renovation, stating that he paid the full purchase price and cost of renovations. He has no knowledge of Ms. James being an heir to the estate of Doxon, Doxey, Claw, et al and therefore whether the house is in fact situated on her family land. He puts her to proof of this.
- [6] He claims that the relationship between himself and Ms. James lasted 4 years. Prior to Ms. James moving into the house, she lived in rented accommodation, where he would visit her on weekends. After she moved into the house, he continued to visit her on weekends there. He denies having any discussion with Ms. James about purchasing a house together but admits that she informed him that the house, which was in deplorable condition, was for sale. He could not say whether she had any discussion with the vendor regarding the sale price of the house and puts her to proof. He, however, denies that the house was being sold for \$10,000.00. He says that he dealt with Clement Nelson ("Mr. Nelson"), agent for the vendor, who always maintained that the purchase price was \$5,000.00. He also denies that Ms. James had any agreement with the vendor to purchase the house for \$5,000.00. He exhibits the agreement for sale to which she was not a party.

- [7] He states that he purchased the house on 6th February 2015 and denies that it was purchased for her for her birthday which is in September. He states that there was no receipt prepared in respect of the purchase that could have been presented to her, and vehemently denies ever giving any indication that he purchased the house for her as a birthday present or at all. He states that the sale agreement was executed on the day of purchase and prepared in his name only because Ms. James was never a party to the agreement to purchase the house. He has always maintained sole ownership of the house and only allowed her to stay there temporarily.
- [8] He further denies making any promises to Ms. James that the house was hers and therefore that she made any contribution to the house, to her detriment, in reliance on any such representation, as there was none. He says she made no contribution to the cost of renovating the house and did not assist with making any loan repayment. Prior to the breakdown of the relationship in April 2018, he paid all utility bills for the house with the exception of one month when he asked her to assist because he had unforeseen expenses. He also stocked the house with food and groceries when he visited on weekends. He therefore denies that she has any interest in the house which he holds on trust for her. He admits that she has indicated her willingness to purchase the house but states that she has not made a formal offer and he has no knowledge of her ability to purchase the house. He further admits that Mr. John Pierre, administrator of the estate of Doxon, Doxey, Claw et al has agreed to sell him the land on which the house is situate.
- [9] Mr. Montoute claims that Ms. James has insisted on staying at the house despite him demanding that she vacate from January 2019 and despite having no legal interest or other right to remain in the house. As such, she is not entitled to the relief she seeks and is trespassing, by virtue of which he has been deprived use of the house and suffered loss and damage. He therefore counterclaims for possession of the house, mesne profits at such rate as the court deems fit until possession is delivered up, interest, and costs.

The Law

Constructive Trusts

[10] Where the legal title to property is conveyed to one person and another claims entitlement to a beneficial interest therein on the basis of a constructive trust, it is well settled that the party claiming the beneficial interest must show: (i) a common intention between them that the beneficial interest in the property would be jointly owned; and (ii) that he/she has acted to his/her detriment or significantly altered his/her position in reliance on that common intention. It is accepted that common intention may be established by evidence of an express agreement, arrangement or understanding; or may be inferred from the conduct of the parties.

[11] The more recent cases in this area of the law espouse the principle that:

“The law has indeed moved on in response to changing social and economic conditions. The search is to ascertain the parties' shared intentions, actual, inferred or imputed, with respect to the property in the light of their whole course of conduct in relation to it.”¹

In this regard, there is less emphasis on direct financial contribution, giving way to the recognition that other forms of contribution are relevant and may be taken into account.

[12] In the House of Lords case of **Stack v Dowden**², Lady Hale, with whom the majority agreed observed the following:

“[68] The burden will therefore be on the person seeking to show that the parties did intend their beneficial interests to be different from their legal interests, and in what way...

[69] In law, 'context is everything' and the domestic context is very different from the commercial world. Each case will turn on its own facts. Many more factors than financial contributions may be relevant to divining the parties' true intentions. These include: any advice or discussions at the time of the transfer which cast light upon their intentions then; the reasons why the home was acquired in their joint names;... the purpose for which the home was acquired; the nature of the parties' relationship; whether they had

¹ Abbott v Abbott [2007] UKPC 53, at paragraph 6.

² [2007] 2 All ER 929 at paragraphs 68-69.

children for whom they both had responsibility to provide a home; how the purchase was financed, both initially and subsequently; how the parties arranged their finances, whether separately or together or a bit of both; how they discharged the outgoings on the property and their other household expenses. When a couple are joint owners of the home and jointly liable for the mortgage, the inferences to be drawn from who pays for what may be very different from the inferences to be drawn when only one is owner of the home. The arithmetical calculation of how much was paid by each is also likely to be less important. It will be easier to draw the inference that they intended that each should contribute as much to the household as they reasonably could and that they would share the eventual benefit or burden equally. The parties' individual characters and personalities may also be a factor in deciding where their true intentions lay. In the cohabitation context, mercenary considerations may be more to the fore than they would be in marriage, but it should not be assumed that they always take pride of place over natural love and affection..."

This case concerned property conveyed in the joint names of the parties. While the Court acknowledged that there are differences between sole and joint names cases when trying to decide the common intentions or understanding between the parties, it noted that the approach should be similar.

Promissory Estoppel

[13] In **Halsbury's Laws of England**, the doctrine of promissory estoppel was described thus:

"When one party has, by his words or conduct, made to the other a clear and unequivocal promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to their previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced. This doctrine of promissory estoppel derives from a principle of equity enunciated in 1877 but has been the subject of considerable development. It is also known as 'equitable forbearance'."³

³ Estoppel (Volume 47 (2014)) 4. Estoppel By Representation (3) Promissory Estoppel 385. Promissory Estoppel; In General.

Analysis

The Evidence

Theodora James

- [14] Ms. James' evidence, as set out in her witness statement, was organized under various headings, which I will adopt, so far as relevant.

Their Relationship

- [15] When their relationship started, she was renting her aunt's house and Mr. Montoute would assist her with the rent. She says Mr. Montoute would always say that he would make her life better and that he would put her in a house. She never asked him for these things; he offered them willingly. They had discussed building a house, but it was expensive.

Negotiation for Purchase of the House

- [16] In 2014, she learnt that Mr. Rigobert was selling his house for \$10,000.00. She discussed the possibility of purchasing it with Mr. Montoute. She first spoke to Mr. Nelson, Mr. Rigobert's agent, who confirmed the price but stated that it was negotiable to \$7,000.00. She got Mr. Rigobert's telephone number and called and spoke with him in Mr. Montoute's presence. She informed Mr. Rigobert of her desire to purchase but that all she could afford was \$5,000.00. He told her because she was the one purchasing, he would give it to her for \$5,000.00. She told him she would purchase it and that he should not sell to anyone else, and he agreed. She states that Mr. Montoute heard the entire conversation.

Their Discussion

- [17] They discussed it further and Mr. Montoute agreed to purchase the house for the price of \$5,000.00, for which he would take a loan from a credit union. However, he told her since he would be taking the loan, she would be solely responsible for paying her bills at her rented accommodation, being cable, electricity, internet, and rent, with which she agreed.

- [18] She states that Mr. Montoute promised to purchase the house for her, for her birthday. It was their custom each year to give each other something on birthdays. Her birthday was 12th September, but they did not do anything that year, because Mr. Montoute said he would be buying the house for her when he got the money. He applied for the loan in December 2014 to her knowledge.

The House Given to Her

- [19] On the day Mr. Montoute purchased the house he told her in a telephone conversation that he had a surprise for her. When he arrived home, he handed her a document and said 'surprise!'. She was taken aback when she read the document because it was for the sale of the house. She was angry that Mr. Montoute purchased it without her knowledge and in her absence. She and Mr. Montoute spoke about it and he assured her he purchased it in his name but that it was hers and her name would be put on it. This seemed satisfactory to her because, at the time, she trusted him.

Renovation of and Investment in the House

- [20] The house, as purchased, had a wooden partition dividing a bedroom from a sitting room and kitchen. Ms. James however wanted the house to accommodate her daughter. As a result, they did not move in immediately and renovation was undertaken. Mr. Montoute took another loan for \$4,600.00, but this money finished quickly.
- [21] Ms. James says she supplied the rest of the money, which was used to purchase tiles, windows, doors and pay labourers. She was assisted by her daughter who lives in Canada who would send her money via Western Union whenever she asked. Ms. James says she also enticed family and friends to assist with labour in a '*coude mere*'. She says some friends also gave materials towards the house at a reduced price, one such being a friend of Mr. Montoute, who sold them 20 sheets of galvanize at a reduced price of \$400.00 of which she paid half. She says that Mr.

Montoute held all the receipts for the purchases and loan although he would show them to her.

Reliance on their Agreement

[22] She says she performed her part of the agreement in paying all the bills at her rented accommodation and at the house. She says she was the one who placed the electricity at the house in Mr. Montoute's name, as the electricity at her rented accommodation had been in her name. She states that she had to get authorization from Mr. John Pierre, the administrator of the estate of Doxon, Doxey, Claw et al, who was reluctant, but agreed to do so at her insistence. Despite the electricity being placed in Mr. Montoute's name, she says she paid the electricity bill. She would give Mr. Montoute the money to pay it for her as he was on his way to work. Her daughter in Canada assisted her with the internet and cable bills which were paid online.

[23] She invested in the house by contributing to the renovations and upkeep, and by going out of her way to get her friends and family to assist to fix what she thought was 'her house'. When it was complete, she left her rented accommodation a short distance away and moved into what she thought was 'her new house'. She moved in on 24th December 2016. Had she thought for a moment that the house was Mr. Montoute's and that she was just a guest in his home, she would not have moved. She would have continued to rent from her aunt as she had done for so many years, which accommodation is no longer available to her. Should she now have to leave the house, she would have nowhere else to go as there are no houses available on her family land where she has lived surrounded by her family since she was 12 years old. She has therefore acted to her detriment.

Missing Documents

[24] Ms. James's evidence is that sometime in May 2017, whilst she was on a trip abroad, Mr. Montoute returned to the house and took all the documents, including her bills and receipts without her knowledge. She became aware of this when her

lawyer asked her to bring in all her documents and she was searching for them but could not find them.

Ownership of the House

[25] Ms. James states that the house is hers because Mr. Montoute told her he purchased it for her. When he gave her the receipt of purchase, he assured her that although her name was not on it, the house was hers as he had always promised to put her in a house of her own. She acted on this promise by finding and negotiating the purchase price of the house. She also gave money towards the house, invested time and got the assistance of her friends and family for the renovation. She did all these things because she believed the house was hers.

[26] She did not take a risk by moving to the new house but did so because she knew it was Mr. Montoute's intention and hers that the house would belong to her. It was on the basis of their discussions that she moved and invested so much in the house. Mr. Montoute on the other hand did not maintain or look after the house and its surroundings because they both knew it was her house. He never once said that she was looking after the house for him. He expected her to take care of the house herself because it was hers. She never asked him for money when anything was needed for the house; such things she would buy herself.

[27] She is advised and therefore believes that she is the beneficiary of the house, which Mr. Montoute holds on trust for her and that because of the promises he made to her and her reliance on them, he is prevented from going back on his promises.

Cosmas Rigobert also known as Cosmas Hugobert

[28] Mr. Rigobert's evidence was that he was given permission to build a house on the land by Cotilda Doxon, a condition of which was that if he ever sold the house, he would sell it to a Doxon. He built his house and lived there for 10 years before he relocated and decided to sell it. He informed Mr. Clement Nelson, who was responsible for looking after the house for him, that he would accept \$10,000.00 for

it. He received an offer of \$7,000.00, however, he refused. One day he received a call from Ms. James who said she wanted him to come to Micoud to speak with him. When they met, she told him she wanted to buy the house. He told her that the purchase price was \$10,000.00 or more, but since he knew her, he would accept \$5,000.00. They agreed that price and she said she would speak to her boyfriend and call when she was ready. The deal was final.

[29] On 6th February 2015, he received a call from Mr. Nelson that the people were ready to purchase and that he should come to Dugard, Micoud. He says he met Mr. Nelson at the home of Luke Jn Pierre ("Mr. Jn Pierre"). Mr. Jn Pierre, and Mr. Montoute whom he was meeting for the first time, were also there. He says he asked for Ms. James and was told she was not present. He states that he replied, in the presence of all, that he would not go ahead with the sale if Ms. James was not there, as he was selling the house because of her. Both Mr. Nelson and Mr. Montoute informed him that Ms. James had said it was 'ok', which he understood to mean that it was 'ok' for the sale to proceed in her absence. He says he is unable to read and did not know at the time that Ms. James' name was never written on the receipt.

[30] As far as Mr. Rigobert is concerned, he sold his house to Ms. James. He did not sell his house to Mr. Montoute, does not know him, has never had a conversation with him, was never approached by him to purchase and would never have sold to him. He would never have sold his house to someone who was not a Doxon at that price. During the transaction, he says he told all present that it was because of Ms. James that he was selling his house for \$5,000.00. He is upset and disappointed to know that Mr. Montoute is now claiming the house as he would not have sold it to anyone except Ms. James for that price.

Clement Nelson

[31] Mr. Nelson confirmed that Mr. Rigobert was selling his house for \$10,000.00 but stated that Mr. Rigobert indicated that if he found a family member interested in buying the house, he would consider a lower price. Mr. Nelson says one day Mr.

Rigobert informed him that he had spoken to Ms. James and agreed to sell her the house for \$5,000.00. He says Mr. Rigobert stated that he was only selling at that price because it was Ms. James.

[32] Sometime thereafter, the sale of the house came up in conversation amongst himself, Ms. James, Mr. Montoute and others, and he recalls Mr. Montoute saying that he was going to buy the house for Ms. James. Mr. Montoute had said that it was not a house he wanted but he wanted to see Ms. James in a better place.

[33] Mr. Nelson says that one morning, Mr. Montoute called to inform him that he was ready to purchase the house and asked him to be a witness. Mr. Montoute informed him that Mr. Rigobert was already in the area and that the transaction was going to take place at Mr. Jn Pierre's house. Mr. Nelson met Mr. Montoute on the way to Mr. Jn Pierre's house and on the short walk, Mr. Montoute informed him that he was supposed to put Ms. James' name on the paper but a friend advised him to buy the house and put her name after seeing how living together goes.

[34] Mr. Nelson says that after the money had changed hands, Mr. Rigobert said that he was upset that Ms. James was not present, since he was selling the house to her. Mr. Rigobert could not understand why she was not there when it was because of her that he had sold his house at such a low price. Mr. Rigobert said if he had known, he would not have sold the house. At the time, Mr. Nelson says he took the whole incident for granted because everyone knew that Mr. Montoute had promised Ms. James the house and he could not see why Mr. Montoute would go back on that promise.

Luke Jn Pierre

[35] Mr. Jn Pierre says he knew Ms. James since she was about 15 years old. He says that the first time he met Mr. Montoute was at an event, and Mr. Montoute told him that he was in a relationship with Ms. James. He gave unsolicited information about their relationship and his feelings towards her. He gave the impression that it was a serious relationship and not a fling. He also stated that he would do whatever he

could to help her improve her situation. Thereafter, he would see Mr. Montoute in Dugard spending time with Ms. James and knew that Ms. James would also go to spend time with Mr. Montoute at his home. Mr. Jn Pierre says he would frequent their home and Mr. Montoute would initiate conversations about their relationship. One day, Mr. Montoute told him that he was going to buy a house for Ms. James and asked him to be a witness.

[36] Sometime thereafter, Mr. Jn Pierre says Mr. Nelson, Mr. Montoute and Mr. Rigobert met him in his shop in Dugard. Mr. Montoute asked him to prepare the document for sale of the house in Ms. James' name. However, Mr. Jn Pierre says he told Mr. Montoute that since he was the one paying the money, he should put the document in his name and Mr. Montoute agreed. Mr. Jn Pierre prepared the document in Mr. Montoute's name.

[37] On the day of the sale, Mr. Jn Pierre says Mr. Nelson, Mr. Rigobert and Mr. Montoute met at his house. The money changed hands and the document was signed. Although the document for sale was in Mr. Montoute's name, Mr. Jn Pierre says he knew that it was Mr. Montoute's intention to buy the house for Ms. James. Mr. Jn Pierre says that Mr. Montoute's claim to the house outright is far from the truth. Mr. Montoute bought the house for Ms. James because he loved her and because he always promised to improve her situation. Buying a house for her was one way he had planned to do that.

[38] Mr. Jn Pierre says had he known that Mr. Montoute would seek to claim the house outright, he would never have advised him to put his name on the receipt as this was not his intention. He intended to buy the house for Ms. James, as in the first place Mr. Montoute asked him to prepare the document in her name. It was clearly his intention to buy the house for her and this supports his statements that he would do anything to help her. Mr. Jn Pierre states that ownership of the house was not a joint venture; it was purchased for Ms. James only.

Sayanar James

- [39] Sayanar James is Ms. James' daughter. Her evidence was in relation to the living arrangements between Ms. James and Mr. Montoute and is that Mr. Montoute would visit and stay with her mother at her rented accommodation on weekends. On weekends and also when school was closed, she and her mother would also visit and stay with Mr. Montoute at his home in Castries.

Francis Montoute

- [40] Mr. Montoute says at the time he met Ms. James, she was living in rented accommodation in Dugard, Micoud and he lived at his house in Babonneau, Castries. Her only job was boxing bananas every other week for farmers. When he met her, she owed six months' rent totaling \$300.00. He cleared the rent arrears and gave her \$1,000.00 to support herself. He also helped to support her daughter who was in secondary school by buying books and other school supplies, as well as paying for her CXC examinations.
- [41] Towards the end of 2014, he says Ms. James informed him that there was a house in Micoud for sale. The house was in extremely poor condition and required repairs. There was no toilet, running water, or electricity. The front door and roof were in need of repair and the windows needed to be replaced. Mr. Montoute says he told her he was interested in purchasing the house and she told him to contact Mr. Nelson about it. He says he dealt only with Mr. Nelson and no one else on the matter of purchasing the house. He says further that Mr. Nelson always maintained that the sale price was \$5,000.00. No other price was ever brought up, no mention was made of Ms. James or the sale being conditional upon Ms. James receiving the house or any share of it, or it being on land to which she may have been entitled.
- [42] Mr. Montoute says he only encountered Mr. Rigobert on 6th February 2015 when the purchase was finalized. Prior to that date he had never had any discussions with Mr. Rigobert. On that day, Mr. Rigobert simply attended the meeting to sign the document for sale after which Mr. Montoute paid him the \$5,000.00. Mr. Rigobert made no mention of Ms. James at the meeting.

- [43] Mr. Montoute says at no point did he ever discuss purchasing the house jointly with Ms. James or for her. Mr. Montoute says he always intended the house to be his sole property. It was purchased by him with money he borrowed from the Saint Lucia Civil Service Credit Union. After purchasing the house, Ms. James told him that Mr. Rigobert had originally offered it to her for \$3,000.00 and therefore Mr. Rigobert had raised the price of the house in relation to him.
- [44] Mr. Montoute says that towards the end of 2015 he began renovations to the house. He had to take several additional loans from the Credit Union. Between 2015 and 2018, he borrowed at total of \$58,100.00 to purchase and renovate the house. Ms. James made no contribution to the cost of renovation. During the renovation, on occasions when the workmen ran out of materials, he would ask Ms. James to contact a friend of his, Mr. Luke Jn Pierre for assistance. Mr. Luke Jn Pierre would lend Ms. James the money to pay for the materials and their delivery and he would reimburse Mr. Luke Jn Pierre.
- [45] Mr. Montoute says he moved into the house on 22nd December 2017. He allowed Ms. James to stay there and would continue to visit her on weekends as per their usual arrangement. He would stock the house with food and other groceries when he visited. He paid the connection fees for the water and electricity and paid the bills up until the breakdown of their relationship in April/May 2018, with the exception of one electricity bill in April 2018 when he had unforeseen expenses. As at May 2018, the house had no landline or internet service.
- [46] He says he moved out immediately after the incident which led to the break-down of the relationship. He allowed Ms. James to continue staying in the house until January 2019 when he demanded that she vacate. Ms. James has offered to purchase the house; however, he has no interest in selling to her. Mr. Montoute says she never contributed to the purchase price of the house or the cost of renovating or any of the utility bills, with the exception of the one mentioned above. He further said that he never promised her full or partial ownership of the house.

Despite formal written notice to leave, she remains in the house and is therefore trespassing. He wishes to have immediate possession of the house together with damages for her failure to vacate.

John Pierre

- [47] Mr. John Pierre ("Mr. Pierre") is the administrator of the Estates of Doxages Doxey Claw, D'Orzella Louis, D'Orcina Pierre Louis, and Susanna Thomas. 11/15 of the land registered as Block and Parcel 1626B 248 forms part of the said Estates. The remaining 4/15 forms part of the Estate of Cecil Doxey of which Leroy James is the Executor.
- [48] Mr. Pierre says that Ms. James claims an entitlement to land part of Block and Parcel 1626B 248 on the basis that she is an heir to the Estate of Doxages Doxey Claw. The house purchased by Mr. Montoute sits on the lot being claimed by her. However, he says she is neither an heir to the estate of Doxages Doxey Claw nor to any of the other estates comprising the land. She does not therefore stand to inherit any of the land, and she has no legal or equitable right or otherwise to occupy the land. She is currently squatting and has merely been allowed to remain on the land for the time being.
- [49] Mr. Pierre says in or about 2015, Ms. James approached him to authorize LUCELEC to supply the house with electricity. She told him she had just bought the house; however, she wished the electricity to be placed in Mr. Montoute's name. He says this struck him as odd, but he proceeded to make the necessary arrangements. Mr. Pierre says he later learned that the house had been bought by Mr. Montoute and not Ms. James when Mr. Montoute thereafter inquired of him the cost for putting together the necessary paperwork to facilitate electricity connection.
- [50] In or about 2015, Mr. Montoute approached him about purchasing the portion of land on which the house sits. In or about January 2019, Leroy James and himself agreed to sell this lot to him, which he says they have the legal capacity to do.

Analysis

[51] Ms. James sought to present evidence to support her case that there was (i) a common intention that the house was hers by virtue of the promises allegedly made to her by Mr. Montoute and (ii) that she acted to her detriment in expending money on the house in reliance on those promises.

[52] However, counsel for Mr. Montoute, Mr. Anwar Brice ("Mr. Brice") in his written submissions, argued that there were several gaps and inconsistencies in Ms. James' witnesses' testimonies that reduce their credibility. I do indeed find that the evidence presented for Ms. James revealed discrepancies, which tend to undermine her case. I would briefly highlight a few:

1) Ms. James' evidence is that she called Mr. Rigobert on the telephone and negotiated and agreed the purchase price of \$5,000.00, reduced from \$10,000.00. This telephone conversation took place in Mr. Montoute's presence. In contrast, Mr. Rigobert's evidence is that Ms. James called him on the telephone and asked to meet with him in person. He traveled all the way to Micoud, where he met her in person and that is when they negotiated and agreed the purchase of \$5,000.00. He does not mention Mr. Montoute being present. This is significant as Ms. James' case is that she obtained a discount of \$5,000.00 of which Mr. Montoute was aware and which is, in essence, her contribution towards acquisition of the house. Mr. Montoute's case is that he was not privy to any negotiations between her and Mr. Rigobert; he dealt directly with Mr. Nelson and the purchase price he was offered was always \$5,000.00. Mr. Nelson confirmed in cross-examination that Mr. Montoute dealt with him on the matter of the sale of the house and that the negotiations started with him. Additionally, whilst Mr. Rigobert was adamant that the purchase price was \$10,000.00; that he had rejected an offer of \$7,000.00; and that he only sold for \$5,000.00 because it was Ms. James purchasing, the evidence of Ms. James and Mr. Nelson suggests otherwise. Ms. James' evidence is that Mr. Nelson told her Mr. Rigobert was willing to accept \$7,000.00 and Mr. Nelson gave

evidence that Mr. Rigobert was willing to accept a lower price if a family member was interested in purchasing the house.

- 2) Mr. Rigobert emphasized in his witness statement that at the signing of the agreement for sale, he not only asked for Ms. James but lamented that she ought to have been present because he was selling the house for such a low price only because he was selling to her. He emphasized that he said this in the hearing of all who were present and was assured by both Mr. Nelson and Mr. Montoute that Ms. James was 'ok' with the sale proceeding in her absence. However, Mr. Nelson's evidence, both in his witness statement and under cross-examination, is that Mr. Rigobert never mentioned Ms. James' absence at the meeting. He only mentioned his disappointment to him after the meeting, that is, after the agreement had been signed and the money exchanged, and when they were alone. Mr. Jn Pierre does not mention Mr. Rigobert making such statements in his evidence of what transpired at that meeting. Given Mr. Jn Pierre's evidence that he is the one who suggested that the agreement be placed in Mr. Montoute's name and not Ms. James; and Mr. Nelson's evidence that Mr. Montoute told him that he had been advised to buy the house in his name and wait to see how living together goes before putting Ms. James' name, had Mr. Rigobert indeed made the alleged statements at the meeting, it ought to have raised some concern and been recalled in the evidence. This casts doubt on whether Mr. Rigobert in fact made the statements at the meeting as alleged, and whether it was truly a condition of the sale price of \$5,000.00 that Ms. James be the purchaser or the beneficiary of the purchase.
- 3) Furthermore, under cross-examination, Mr. Rigobert confirmed his understanding that the signed agreement was proof of transfer of ownership of the house. He also confirmed his practice of having documents read over to him before signing because he is unable to read. Despite how important it was to him that the house was sold to Ms. James at the agreed price and no one else, Mr. Rigobert admitted that he signed the agreement in Ms. James'

absence without having it read over to him. This does not comport with the seriousness of the concerns he now says he had at the time of the transaction. It calls into question whether, in fact, the house being for Ms. James weighed as heavily on his decision to sell at that price as he alleges.

- 4) Mr. Jn Pierre gave evidence that Mr. Montoute told him he was going to buy the house for Ms. James and later asked him to prepare the sale agreement in Ms. James' name. He, however, encouraged Mr. Montoute to prepare the agreement in his name rather than Ms James', although in cross examination he confirmed his understanding that in giving a gift, the giver pays, and the recipient takes ownership and would appear on ownership documents. His reasoning was that Mr. Montoute was paying and the document was evidence of payment. Given his evidence that Mr. Montoute spoke on several occasions of purchasing the house for Ms. James and his understanding that the house was to be owned by her, it is curious that he would dissuade Mr. Montoute from placing her name on the agreement.
- 5) This incongruity is compounded by Mr. Jn Pierre's cross examination wherein he prevaricated in relation to his evidence in his witness statement and earlier cross-examination that Mr. Montoute told him that he was purchasing the house for Ms. James. In stark contrast, in cross-examination, he stated that Mr. Montoute did not tell him 'word for word' or conclusively that he was going to buy a house for Ms. James. He recalls Mr. Montoute saying how much he loved Ms. James, that he would do anything to improve her situation and that he initially asked him to prepare the agreement for sale in her name. He explained that from these circumstances, he inferred that Mr. Montoute was purchasing the house for her.
- 6) In cross-examination, Mr. Jn Pierre also wavered on other aspects of his evidence is his witness statement, in particular as to the frequency he would see Mr. Montoute in Micoud and whether he ever visited and conversed with

him there. This is important in the context of his admission that Mr. Montoute did not tell him specifically that he was buying the house for Ms. James but that he gathered that it was his intention based on the several intimate conversations they shared when he visited with Mr. Montoute whilst he was staying with Ms. James in Micoud, during which Mr. Montoute always discussed his relationship with Ms. James and his intentions in relation to her.

- 7) Ms. James gave evidence that after the initial payment for the purchase price of the house, and an additional loan taken by Mr. Montoute in the sum of \$4,600.00, she put up the rest of the money for the renovation, which was used to buy tiles, windows, doors and pay labourers. However, in cross examination when asked to provide an estimate of the amount of money she put into the renovation, she was unable to do so. Her response was that she never kept a record of her contributions. When asked about receipts for her spending, she claimed that she kept them in a bag which was taken away from her by Mr. Montoute. This, however, contradicts evidence in her witness statement where she said that Mr. Montoute was the one who kept all the receipts. She then sought to say 'they' put them in a bag, suggesting it was joint and that in any event, she contributed money and the items were purchased in his name. I agree with counsel for Mr. Montoute that it remains unclear who kept the receipts and what exactly happened to them. Even if I accept that she contributed cash such that the receipts would not assist, it is strange that she would have expended money for the items she claims she did, which would not have been insubstantial; yet could not provide even an estimated figure, although she had no difficulty remembering the amount of the additional loan alleged to have been taken by Mr. Montoute.
- 8) It also remains unclear whether Ms. James is claiming that the house had been gifted to her so that she owned it outright or whether she is claiming to have acquired an interest in the house by virtue of contributions made. The claim of a gift is to my mind, inconsistent with a claim of a constructive trust. On one

hand, in both her witness statement and cross examination, Ms. James' evidence is that the house was a surprise birthday gift to her; that Mr. Montoute promised to buy the house for her; and that he assured her that it belonged to her after he purchased it and that her name would be placed on it. On the other hand, she stated categorically in cross-examination that Mr. Montoute did not promise her a house; what he promised was that the two of them would live together in a house and build together. This is a significant inconsistency as a promise to live together or build together does not necessarily connote a promise to give her ownership of a house. The fact that the receipt/sale agreement was presented to her as a surprise or that Mr. Montoute had foregone purchasing her a birthday gift the previous year does not make the purchase of the house a gift of ownership of it to her. It is equally consistent with her being given the benefit of living there rent free and it would be natural for a person to 'tighten their belt' in respect of their finances in anticipation of a large expenditure. Further, her name could not be added to the receipt or sale agreement as an indication or proof of ownership of the house. The sale agreement or receipt is not in the nature of a land register or bill of sale. It is well settled that, if there is no deed, a gift of chattels is not complete unless accompanied by delivery.⁴

These discrepancies and inconsistencies render the evidence of Ms. James and her witnesses less credible and I accept the evidence of Mr. Montoute instead.

[53] I find that the parties' intention as to whether Ms. James would have a beneficial interest in the house must be inferred from the whole course of the parties conduct in relation to it. I do not find that there was any agreement between the parties as to the ownership. I am not persuaded on a balance of probabilities that Mr. Montoute told Ms. James the house was hers or that she owned it.

⁴ Halsbury Laws of England Gifts (Volume 52 (2014)) 1. Gifts Made Between Living Persons (5) Making A Gift (ii) Delivery 237. Necessity For Delivery.

- [54] Further, the evidence presented as to the whole course of conduct does not lead to the conclusion that it was intended that the house would be jointly owned by Mr. Montoute and Ms. James. The purchase price was paid solely by Mr. Montoute for which he took a mortgage for which he was solely liable. There is no evidence that Ms. James contributed in any way to the mortgage repayments.
- [55] Though she claims to have obtained a discount on the purchase price, this has not been proven on the evidence. I so conclude based on the inconsistencies highlighted above: the discrepancy as to the circumstances in which the discount was negotiated; Mr. Rigobert sold the house for \$5,000.00 to Mr. Montoute in Ms. James' absence and without ensuring that she was named in the agreement; and Mr. Montoute's unhesitating evidence that the only price he was ever offered was \$5,000.00 which he accepted.
- [56] As to contribution to the maintenance and upkeep of the house after purchase, again, Ms. James' alleged contributions have not been made out. She has provided no proof of her contributions to the renovations and was unable to even estimate a figure. Though she provided a print-out of funds sent to her on average twice per month between April 2015 and November 2018 by her daughter in Canada ranging between CAD\$80.00 and CAD\$300.00, there is no evidence of how this money was used.
- [57] Ms. James also presented a Flow account print out which shows charges that had been paid. There is however no indication as to whose account or the property to which it relates or who made the payments. I accept, however, that on 3 occasions in September and October 2016 and August 2017, Flow bills were paid by Ms. James' daughter in Canada as supported by the payment summary confirmations presented. Again, there is no evidence of whose account or the property to which the payments related. I would have to assume that at least two of these relate to Ms. James' rented accommodation since the new house was under renovation and they had not yet moved into the house at that time and were still living at her rented

accommodation. The 5 Flow bills paid by Ms. James between August 2018 and March 2019 are of no moment as that was during the period after the relationship broke down and Mr. Montoute moved out of the house.

[58] Similarly, there are also three bills paid to the Water and Sewerage Company Inc. which show Ms. James as proprietor and refer to an address in Dugard. They do not indicate whether they refer to her rented accommodation or the house. The dates being August and November 2018 and March 2019 suggest the new house, but again, after the relationship broke down and Mr. Montoute moved out. Surely, Ms. James cannot expect the Court to take these into account in establishing any common intention or detrimental reliance. The several LUCELEC bills presented by Ms. James also refer to the period between July 2018 and March 2019. There are 9 of them in total and all save two are in respect of account number 2108993 which describe the customer as Mr. Montoute. The other two are in respect of account number 2000763 and describe the customer as Ms. James. No explanation has been provided. Again, the dates being after the break down of the relationship, even if they refer to the house, are of little moment.

[59] I note that Mr. Montoute's evidence in respect of the loan is lacking, in that while the loan account history provided shows drawdowns, it does not prove that they are referable to the house. On his own evidence, not all the sums drawn were in respect of the house. Mr. Montoute says he took loans prior to purchase of the house which he used to assist Ms. James with her rent and other expenses at her rented accommodation. As to utility bills for the house, again the parties are at odds and the evidence presented fails to establish who in fact paid what. However, this is Ms. James' case and it for her to make it out; not Mr. Montoute. The law is clear that as she is alleging that the beneficial interest is different from the legal interest, she must prove her beneficial interest.

[60] I take into account also the nature of the parties' relationship prior to, at the time and after the house was purchased and note that they appear to have kept their personal

and financial affairs quite separate. They lived separately in their respective homes visiting each other on weekends and holidays as convenient. There is no evidence of joint accounts, policies of insurance or the like. Mr. Montoute however seems to have generally assisted Ms. James with her financial needs, assisting with her rent and bills and expenses for her child. He appears to have done so out of generosity.

[61] Whilst I believe that Mr. Montoute may have made promises to Ms. James, as his girlfriend, to assist her, to improve her situation and even to put her in a house, I do not believe that Mr. Montoute ever had or expressed an intention to give her the house whether as a gift or otherwise. I do not believe he ever intended her to have any ownership or interest in the house. I am of the view that his intention was that so long as the relationship lasted, he would continue to look after her as he had done prior and she would benefit from living there. He had been accustomed to assisting her from the beginning of their relationship in relation to her rented accommodation and his intention was to continue to do so by purchasing a house in which she could live rent free. This would be to his benefit as well since he was the one assisting her with rent, and he was staying with her on weekends. The house was a sort of investment for Mr. Montoute, as he said himself. In the absence of a finding of any common intention or assurance that Ms. James owned the house, her claim to an interest therein based on constructive trust or promissory estoppel respectively must fail.

[62] In any event, I would have difficulty accepting that Ms. James acted to her detriment. She has failed to establish, by evidence, her contribution to the cost of acquisition, renovation or utility bills as noted above. Even if I were to accept that she paid the bills at her rented accommodation and at the house in reliance on some promise or common intention that she would own it, I would find this difficult to accept as acting to her detriment. She was the one primarily living at her rented accommodation and the new house and benefitting from the use of the utilities. Any assistance from Mr. Montoute was due to his generosity and represented a windfall to her. She would merely have been paying her own living expenses with which he assisted at her

rented accommodation and paying her own living expenses whilst living rent free in the house purchased and renovated by him.

Counterclaim

[63] Mr. Montoute by way of counterclaim seeks an order for possession of the house, mesne profits until delivery of possession, interest and costs. Mr. Montoute alleges that he gave Ms. James permission to stay at the house until January 2019 when he demanded that she vacate the house. However, he claims that Ms. James has refused to vacate the said house and he has therefore been deprived of the use and enjoyment of the house and has suffered loss and damage as a result. Ms. James denies the allegations made in the counterclaim maintaining that she has an equitable interest in the house and therefore has a right to remain there.

[64] Having concluded that Ms. James is not entitled to any beneficial interest in the house or to ownership of the house, it stands to reason that the counterclaim must succeed and Mr. Montoute would be entitled to vacant possession of the house. In relation to mesne profits, Mr. Montoute has not provided the Court with any information or evidence as to the monthly rental value of the house, in the absence of which the Court can ascribe a nominal value. The Court accepts that a letter was written to Ms. James dated 8th January 2019 demanding that she vacate the house within fourteen days of receiving the letter. The evidence reveals that Ms. James did not vacate the house. Mr. Montoute is therefore entitled to mesne profits for the period January 2019 to the date of actual delivery of possession at the rate of \$100.00 monthly.

Conclusion

[65] On the basis of the foregoing, I make the following Order:

- 1) The claimant's claim that she is the owner in equity entitled to possession of a house situate on land registered as Block and Parcel 1626B 248 in Dugard, Micoud ("the house"), which the defendant holds on trust for her is dismissed.

- 2) The claimant shall pay the defendant prescribed costs on the claim in the sum of \$7,500.00.
- 3) The claimant is to deliver up vacant possession of the house situate on the parcel of land registered as Block and Parcel 1626B 248 located in Dugard, Micoud on or before 14th September 2020.
- 4) The claimant shall pay mesne profits to the defendant at the rate of \$100.00 monthly from January 2019 to the date of judgment, 25th August 2020 and thereafter at the rate of \$100.00 monthly from the date of judgment to the date of delivery of vacant possession of the house together with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment.
- 5) The claimant shall pay prescribed costs to the defendant on the counterclaim based on the mesne profits calculated to be paid to the defendant.

**Kimberly Cenac-Phulgence
High Court Judge**

By the Court

Registrar