

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2011/0386

BETWEEN:

CHRISTIAN COTTOY
of Bequia

CLAIMANT

-AND-

KOOTH HAYWOOD

-AND-

OSWELL HAYWOOD
of Park Hill

DEFENDANTS

Appearances: Ms Patricia Marks Counsel for the Claimant, Ms Nicole Sylvester Counsel for the Defendants.

2015: Mar. 10
Apr. 29

JUDGMENT

BACKGROUND

[1] **Henry, J. (Ag.):** The parties in this case are locked in a battle over interests in a dwelling house located at Park Hill, in the Parish of Charlotte, Saint Vincent and the Grenadines. Kooth Haywood and her son Oswald Haywood have lived in that house since about 2005, right after it was constructed. The land on which the

house is built, belongs to Christian Cottoy as evidenced by Deed of Partition 1528 of 2013. Mr Cottoy claims that he financed the construction of the house to serve as accommodation for his autistic sister Keturah and Kooth Haywood her caregiver. He maintains that Kooth Haywood agreed to be Keturah's caregiver and that he allowed her to live there rent free on condition that she took care of Keturah. Kooth Haywood counters that she contributed to the construction expenses, occupied the house and took care of Keturah for 7 years based on Christian Cottoy's assurances that she would be allowed to live in the house for the rest of her life. She claims a life interest in the house and an injunction restraining Mr Cottoy from evicting her and her son. Oswald Haywood claims that he also contributed to the construction of the house by providing labour and that he occupies it as Christian Cottoy's and Kooth Haywood's licensee. He stops short of asserting an interest in the house on his own account but does maintain that some of the windows installed in the house were supplied by two of his benefactors. Mr Cottoy seeks to have Kooth Haywood and Oswald Haywood evicted from the premises and an injunction to restrain them from remaining in the subject house.

ISSUES

[2] The issues are:-

1. What if any contributions did Ms Kooth Haywood and Mr Oswald Haywood make to construction of the house and whether they are entitled to a life interest or other equitable interest in the subject house through such contributions or by virtue of proprietary estoppels, and if so what is that interest?
2. Whether Oswald Haywood occupies the house as trespasser?
3. Whether Kooth Haywood and Oswald Haywood are entitled to an injunction restraining Christian Cottoy from evicting them from the house?

4. Whether Christian Cottoy is entitled to an injunction restraining Kooth Haywood and/or Oswald Haywood from remaining in the house?

ANALYSIS

Issue 1 – Did Kooth Haywood and/or Oswald Haywood make any contributions to the subject house and are they entitled to a life interest or other equitable interest in it through such contributions or by virtue of proprietary estoppel and if so what is that interest?

[3] Determination of this issue depends on the factual reality surrounding the construction of the house. Mr Cottoy's version of events differs significantly from Ms Kooth Haywood's and Mr Oswald Haywood's. The Haywoods would be entitled to an interest in the subject property if they acted to their detriment by making contributions to the construction of the house, in reliance on promises by Mr Cottoy that by doing so they would obtain such an interest. In order to succeed on this issue, they must establish on a balance of probabilities that:

1. they contributed to the construction of the house based on assurances by Mr Cottoy that they would thereby gain an interest in the subject house;
2. Mr Cottoy either encouraged or acquiesced in their behavior;
3. Ms Haywood fulfilled her part of the agreement to take care of his sister Keturah and moved into the house in furtherance of that agreement; and
4. they believed that their contributions created an interest in the property in their favour; and
5. they acted to their detriment by relying on Mr Cottoy's promises.

[4] In such circumstances, Mr Cottoy would be estopped from asserting his full legal and beneficial ownership in the property. In addition, he would be prevented from

claiming that the Haywoods have not acquired such an interest in the property which might amount to an:

1. equitable right in the property;ⁱ
2. entitlement to compensation equivalent to the value of those contributions;ⁱⁱ
3. order directing Mr Cottoy to transfer to the Haywoods a portion of the property representing their interest;ⁱⁱⁱ or
4. order granting them a licence to use the house for life or such shorter period which represents their interest^{iv} or pending payment of compensation.^v

[5] I turn now to consider the respective accounts of the parties. Mr Christian Cottoy and Ms Kooth Haywood are no strangers. Christian Cottoy's stepfather Ephraim Hopson and Kooth Haywood's mother Ilene Haywood were brother and sister. As children, Mr Cottoy and Ms Haywood grew up in two adjacent households as part of an extended family. Ms Haywood resided with Mr Cottoy's grandmother, Ruth Cottoy from age 4, while Mr Cottoy lived with his mother and stepfather. The family operated it seems as one unit even sharing a common kitchen. Christian Cottoy eventually left Saint Vincent and moved to Tortola, British Virgin Islands where he was living in 2004 – 2005 when the house (the subject matter of this case) was under construction. When Ms Haywood was about 15 years old, Ruth Cottoy died. Ms Haywood left the family house about 4 years later to live with her boyfriend.

[6] In 1986, Mr Cottoy and his siblings Venita, Dawn, Carl and Ferrel purchased an acre of land from one Andrew Adams which was registered one year later by Deed of Conveyance.^{vi} A portion of that land was subsequently conveyed to Christian Cottoy in 2013 by Deed of Partition No. 1528 of 2013. The subject house was built on that parcel. Sometime in 2004, Ms Haywood returned to the family house to live. In the intervening years, she had had a family of her own and her four children accompanied her when she resumed residence at the

Cottoy/Hopson family home. She and her children settled into the downstairs section of the family house, with the permission of Venita Cottoy, another of Christian Cottoy's sisters. At that time, Keturah Cottoy lived in the upstairs unit with her younger sister Josette and her brother Jerome Hopson. The living arrangements reportedly changed later that year when one of Kooth Haywood's sons got into an altercation with Jerome Hopson in the upstairs living quarters. At that point, Josette Hopson left and went elsewhere to live. It is not clear if Christian Cottoy visited Saint Vincent as a result of the fallout from that altercation but it appears he returned to the country in the latter half of 2004. Concerned about Keturah's welfare, he moved her downstairs where Kooth Haywood was living, it seems pursuant to an agreement that Ms Haywood would care for Keturah.

[7] Christian Cottoy explained that it was then that he decided to build a house for Keturah to live peacefully and comfortably. He stated that Keturah was capable of taking care of her personal needs including cleaning but because she was autistic she still required someone else's guidance and company. He indicated that before embarking on construction of the house, he asked Kooth Haywood if she would agree to move into it with her children and take care of Keturah.^{vii} This conflicts with his assertion in the statement of claim where Mr Cottoy claimed that Oswald Haywood moved into his premises without his permission. He contradicted himself under cross-examination and as the evidence unfolded, it was clear that he had in fact agreed that Ms Haywood's children would be allowed to live in the house with her and Keturah.

[8] Kooth Haywood provided a different account of what was the impetus for constructing the house. According to her, before Mr Cottoy approached her, she had already decided to build her own house on his grandmother Ruth Cottoy's land. She testified that Christian Cottoy's mother (now deceased) had told her where to build. This statement did not have the ring of truth to it. It struck me that she was giving expression to an afterthought. In the normal course of events Ms

Haywood would have needed someone's permission to use property on Ruth Cottoy's demise. It would have devolved to beneficiaries under intestacy or by will. There is no evidence that Ms Haywood was the beneficiary. She could not therefore exercise rights of ownership to the property without the requisite consent. From her account it did not appear that she had such permission.

[9] Ms Haywood testified further that she sought assistance from the government to build her own home, and through that enterprise had accumulated some building materials. She recalled that she had amassed 300 blocks, 2 loads of sand and 2 lengths of pipe which she intended to use for that purpose. However, she could not remember when she got them or how long she had them but she was certain that they were in the yard when she told Christian Cottoy of her plans to build. She indicated that she does not have any receipts from the government to prove that she got those materials and from them. I find it odd that Ms Haywood could not remember when she got the items but she was able to recall the number and quantity of each without difficulty.

[10] Ms Haywood explained that when she told Mr Cottoy of her plans to build, he told her not to build on his grandmother's land because he had joint ownership in land with his siblings and he would cut off his portion and give it to her to build her house on. She indicated that he also told her that he was not returning there to live because he has other lands from his father. Oswell Haywood recalled that one of Christian Cottoy's relatives was going to give his mother land to build her house on. These divergent accounts leave me with the impression that while Ms Haywood might have had plans to build, she had not formalized arrangements for its placement and was perhaps hoping to benefit from the Cottoy/Hopson's family benevolence once more. She averred that Mr Cottoy told her that he would assist her with building the house so that his sister could stay with her, but that she must seek whatever help she could get. She attested further that the house was built with the intention that Keturah would live there.

- [11] Ms Haywood described the subject house as a 4 bedroom concrete block house with a living room and kitchen that she now occupies it with her 2 sons. She admitted and rightly so that the materials she contributed to the construction cannot build a house but retorted that it can make a start. She testified that she and Mr Cottoy both paid the workmen but he paid more than she did. She admitted that Mr Cottoy hired a contractor to build the house but added that she too hired her own contractor, one Bertie Agard who did most of the work, putting in windows, plastering etc. She testified that Keith Richards used to pay him too but she also paid him and he was the last one there and was solely responsible for finishing aspects of the construction which Keith left unfinished. She explained:

"I know Keith Richards. He was the contractor in charge of building the house. Christian Cottoy hired him. I did not pay him. Castillo, the claimant's uncle paid Keith Richards. The money was sent from Christian Cottoy. Keith Richards was a contractor who had workers, masons, carpenters, labourers working with him."

- [12] Oswell Haywood on the other hand testified that Ms Haywood paid Mr Agard probably not at the beginning but at the end of construction. He explained that these payments were made to Mr Agard to *"finish the yard down below, build a sink, pave a good piece of the yard because the workmen didn't finish that, and finish down by the roadside."* This account is believable and I accept Mr Haywood's version over his mother's. Her account cannot be true if as she admitted Mr Cottoy paid for most of the work. She consistently intermingled actual events with mis-statements. This was characteristic of her testimony throughout. I have no doubt that Mr Cottoy financed the major elements of the construction while Ms Haywood contributed here and there including taking care of some minor works on the outside of the house once the bulk of the construction was completed.

[13] Ms Haywood claims that she paid Bertie Agard as a mason but could not recollect how much. She eventually settled on a figure of \$80.00 per day. She testified that she first got Bertie Agard to lay out the foundation but Christian told her that his uncle got Keith to do the construction. She testified that she utilized monies she had saved while working at the boxing plant and from financial help provided by Norris Johnny. Ms Haywood testified further that there were times when Mr Cottoy did not send funds to pay the workmen and she obtained monies from Mr Johnny which she used to do so. Mr Norris Johnny gave evidence for the Haywoods and confirmed this.

[14] Mr Johnny added that whenever he gave Ms Haywood money to pay the workers, she would not repay him when she was reimbursed by Mr Cottoy. He explained that sometimes he did not look for repayment because he has a child with Ms Haywood and he thought the child would reap the benefit from living there. Ms Haywood could not recall who was working or how many workmen Keith Richards or Mr Agard had employed although she remembered that her 3 sons were working there. Ms Haywood clearly suffers from selective memory. This does not assist her and the necessary inference that she was deceptive (in some instances) is made regarding her testimony in general.

[15] Ms Haywood indicated that Mr Cottoy paid for the paint but that Mr Johnny paid the painter \$1500.00 to apply the paint. Mr Cottoy told her *“what the hell you all doing, if they (the Haywoods) cannot help themselves with the paint?”* This was not controverted and is accepted as being factual. She was insistent that she obtained all of the windows for the house through a sponsorship programme in which two of her children were beneficiaries and she also put in the windows, tiling, and different end works which she paid Bertie Agard to complete. She also claimed that she obtained assistance from Mr Norris Johnny to buy cement, blocks, sand, and pipelines and that those pipelines were used throughout the house including on the exterior. She expalined too that she arranged for the men to complete the yard and an external sink which she paid for herself. She

explained that she had no receipts relating to the construction because it was a long time ago. She did not indicate what efforts she might have made to obtain replacement documentation leaving gaps in her account.

[16] Ms Haywood indicated also that she paid for the water and electricity used to construct the house. Mr Cottoy did not dispute this and it is therefore accepted. Ms Haywood added that Venita Cottoy assisted her in building the cupboards and wardrobe. She denied that Venita sent those items because she knew the house was being built for her autistic sister. She admitted that Mr Cottoy objected to her requesting Venita's assistance. This suggests that Mr Cottoy did not want his sister's help in completing the building and leads me to infer that he was mindful of the legal implications and wanted to protect his interest from dilution by his acquiescence in a third party's contributions. Ms Haywood asserted that her contributions to the building would amount to 30% or \$20,000.00 while Mr Cottoy's would be about 70%.

[17] Ms Haywood testified that Mr Cottoy sent his sister and a nephew to live at the house while she was there. She explained that because she was the only one paying the bills she had to leave as she was getting stressed out because she did not have enough money to "keep up". She does not indicate when she left or when she returned but admits she was away for approximately one year. It is common ground that she did not take Keturah with her. Before returning to the house she said she told Mr Cottoy that she intended to do so and he responded that she could do what she likes because it is her business. She indicated that she returned the day after Mr Cottoy's sister and nephew left the house and that Keturah left with her sister.

[18] Ms Haywood claimed that she took care of Keturah for a period of 7 years but does not give any indication of when that period started and when it ended. Her evidence is that she and Keturah shared the downstairs unit of the family house

before construction of the subject house began and they both moved into the house together once it was completed.

[19] It is accepted by the parties that construction started on the house late 2004 ending sometime in 2005. Mr Cottoy provides the timelines as to when Ms Haywood occupied the premises. These are not disputed by Ms Haywood and are therefore accepted. He indicated that he learnt in 2010 that his sister Shelly Hopson had moved into the house and he instructed her to leave which she did soon after. This scenario suggests that Ms Haywood was out of the house from sometime in 2009 to a date in 2010 when Shelley Hopson was occupying the premises. She therefore returned in 2010. Ms Haywood received the notice to quit in April 2011 presumably not very long after she returned. It can be inferred from this that she spent most of 2010 out of the house. She could not therefore have taken care of Keturah for more than 4 ½ years (late 2004 – 2009) including the period before they moved into the subject house.

[20] During the year she was away, she would have discontinued her care-taking role over Keturah and never resumed once she returned. Although Mr Cottoy did not seem to have placed a time period for Ms Haywood's supervision of Keturah, I am certain that the period under contemplation by them both was much longer than 4 ½ years and perhaps more in the region of at least 15 – 20 years. Ms Haywood therefore did not completely fulfill her commitment to take care of Keturah and cannot be credited fully for her services in any event.

[21] Ms Haywood intimates that she relied on assurances given to her by Mr Cottoy and entered into occupation of the property and served as an unpaid caretaker for Keturah for 7 years. She denied being paid by Mr Cottoy to take care of Keturah. Mr Cottoy did not seek to challenge her on this although Ms Haywood was asked about monies and groceries she received from him. She acknowledged that he did infrequently purchase groceries for the family when he visited from Tortola but made no regular financial contributions to his sister's

care. I believe her. Mr Cottoy did not strike me as a philanthropist and her testimony on this score was not contradicted.

[22] Ms Haywood claims that she contributed significantly to the upkeep of the premises to her detriment and is accordingly entitled to a life interest in it. She maintained that all of her contributions were made with Mr Cottoy's knowledge and consent or acquiescence and I accept that. She never asked him to repay her although she told his brother that "*if so I have to get my part,*" after he told her what Mr Cottoy said (presumably regarding his desire for her to vacate the premises).

[23] Oswald Haywood gave evidence similar to his mother's. He testified that he is 24 years old and lives in his mother and Sonny's house. Christian Cottoy is known as Sonny. Oswald Haywood recounted that Christian Cottoy and his wife came to Saint Vincent and Mr Cottoy agreed with Ms Haywood to jointly build a house with her so that his sister could also stay there. He described it as "a partnership thing". He said that because of Jerome Hopson's bad behavior his mother decided to build a house and she went to the government to get help to do so. He stated that his mother also got help from some sponsors of his who sent her money and who financed the windows that were put on the house. He maintained that his mother had money in the house and his two sponsors were going to build a house for him on land that one of Sonny's relatives was going to give her. He stated that he used to help during the construction carrying cement and sand and plastering the walls. He recalled that his mother got cement, sand and blocks from the government and also helped in building the house.

[24] Oswald Haywood explained that Keith Richards and Bertie Thomas aka Bertie Agard built the house. He said Richards had guys and his mother had guys also who she paid to work. He identified Bertie Agard and his brother as his mother's employees. He admitted that at the beginning Mr Richards had all of the men who were working on the house but later after Richards left it was only Agard

who remained to complete it. He said that when Mr Richards left, the walls on the house were fully constructed, the roof was on, but not the doors and windows. He testified that he was never asked to leave the house until he got a “summons” to come to court. He recalled that his eldest brother got into an altercation with Jerome Hopson so he never lived in the subject house for that reason. He testified that Christian Cottoy told Ms Haywood “*I do not want your blasted son to live in that house*”. Evidently, Ms Haywood in deference to Mr Cottoy did not allow her son to join them there. This is quite logically. After all, it was the altercation between this son and Jerome Hopson which led to the construction of the house, according to Mr Cottoy. Ms Haywood’s compliance with Mr Cottoy’s prohibition against that son living there lends credence to his account of what led to the construction of the house. Oswald Haywood was never excluded from the house. He denied that the house was being built for Keturah by Christian Cottoy and insisted that it was a joint enterprise between Mr Cottoy and his mother.

- [25] Like his mother, he testified that Sonny purchased 3 of the 13 windows on the house. He explained that Ms Haywood left the house at one point for a short time and then came back. During that time he stated that he was living in the house with Christian Cottoy’s sister Keturah and Josette Hopson. He stated also that Ms Haywood looked after Keturah for a long time. He remembered that the first request from Mr Cottoy for him to leave the house was in 2011 and not 2005. This is consistent with the timelines as recounted by all witnesses even Mr Cottoy who testified that the house was constructed in 2004/2005. It is very improbable that Mr Cottoy would have given Ms Haywood and Mr Haywood notice to quit in 2005 when they were just taking up residence and when Mr Haywood would have been no more than about 14 years old. Mr Haywood indicated that he always knew the house to be for his mother’s and Keturah’s and that his mother has an interest in it. He asserted that he is therefore not a trespasser as he lives there pursuant to his mother’s interest, ostensibly as her licensee.

[26] Norris Johnny testified for the Haywoods and said that he has known Ms Haywood for over 20 years and has a child with her. He explained that he knew that Ms Haywood had cement, blocks and sand that she had received from the government. He claimed that he assisted Ms Haywood when the house was under construction by buying cement, blocks, sand, pipelines and steel, water hoses and small items such as twine as needed. He recalled collecting the windows for her which he said she provided. Mr Johnny also attested that the materials Ms Haywood received from the government were used in the construction of the house. He explained that he paid a chap from Chapman Village – one “Goff Ferguson” \$1500.00 to paint the house.

[27] Mr Johnny confirmed that he assisted Ms Haywood in paying the workmen when Mr Cottoy did not send the money on time. He also recalled that Ms Haywood’s children assisted in carrying materials from the road to the construction site and she also cooked for the workers. Ms Haywood and her children moved into the house after it was completed along with Keturah. He stated that Ms Haywood was taking care of Keturah even before they moved into the house because Keturah was not well and needed to be taken care of at all times. If this is so, Ms Haywood’s departure from the house would have been in breach of the agreement she had with Mr Cottoy to take care of his sister. I suspect that this fact masks the genuine dispute between Mr Cottoy and Ms Haywood. Mr Johnny conceded that his knowledge of the arrangement between Ms Haywood and Mr Cottoy for construction of the house is based on what she told him as he has no first-hand knowledge of it. I found Mr Johnny to be a credible witness and I accept his testimony.

[28] Christian Cottoy indicated that he contracted with one Keith Richards, a building contractor, to construct the house, cut a road from the main road to the site and concrete the road. He gave evidence that he bought building materials from Bigger Trucking, Con Ollivierre and Coreas Hardware store, financed the construction of the house and paid the workmen who did the construction. He

indicated also that he bought the paints, and all equipment and “utensils” used in the construction, some of which he sent from Bequia where he was building some villas. He testified that he sent doors, refrigerator, stove, paint and a few beds from Bequia. He indicated also that Ms Haywood might have collected some of those items at the wharf while he took some to the construction site himself. He denied that Ms Haywood’s involvement in collecting the items from the wharf is evidence of a joint enterprise between them both.

[29] Mr Cottoy explained that while the house was being constructed, he travelled between Tortola and Saint Vincent and the Grenadines and kept in touch with his brother Jerome Hopson who kept him up to date with progress on the house while he was away. Under cross-examination he seems to have resiled from this position somewhat indicating instead that he did not rely on Jerome Hopson 100% to tell him what was taking place at the construction site, but rather on the contractor that he hired. He indicated that several months after the construction started he learnt that Ms Haywood gave the workmen some blocks to use on the house and on one occasion when he visited the State, he learnt that Ms Haywood had obtained some windows from the government without his permission and he was quite upset.

[30] Under cross-examination, he vacillated repeatedly stating that he was aware that Ms Haywood had windows but he does not know about blocks, he only became aware later that she had put blocks on the house. He contradicted himself further by declaring that he does not know if Ms Haywood put windows on the house because he bought windows for it and he was sending materials to the site every time he was told that materials were needed. He denies knowledge that Ms Haywood paid the workmen for purchasing materials to build the house. Apart from informing her of his disapproval, he did not attest to taking any further action or seeking to reimburse Ms Haywood for this contribution to the construction. He finally conceded that Ms Haywood had made contributions but that he did not ask her to do so. He explained that he did not approach Ms

Haywood to ask her exactly what those contributions were and he did not seek to value those contributions although he was told that Ms Haywood had put a price on them. He added that he asked if all these things were done “*produce the receipts*” and he was never showed any receipts. It was extremely difficult to get an accurate sense of Mr Cottoy’s account regarding who purchased the blocks and windows and about Ms Haywood’s contributions in general as he wavered throughout cross-examination and was severely discredited.

[31] Mr Cottoy insisted that he and Ms Haywood were not engaged in joint construction of the house. He was also adamant that he did not promise Ms Haywood that she would have an interest in the house if she contributed to its construction. He denied that her contributions were based on promises and assurances that he held out to her that she would have a life interest in exchange or for taking care of Keturah.

[32] Mr Jerome Hopson was the sole witness called by Mr Cottoy. He stated that he and Mr Cottoy are brothers and that his father was married to their mother, making him Mr Cottoy’s stepfather. He testified that Ms Haywood’s mother and his father are brother and sister. He explained that he was involved in an altercation with Kooth Haywood’s older son in which he got his hand damaged and as a result Christian Cottoy decided to build a house for his sister Keturah to live peacefully and comfortably away from the altercations and out of harm’s way. He indicated that construction of the house started in 2004 but although he is a construction worker he was unable to assist as he was working elsewhere. He testified that Christian Cottoy purchased building materials and paint and paid all of the workers. He said that he and Christian Cottoy discussed developments on the house and he gave Mr Cottoy progress updates on the construction from time to time. He indicated that Ms Haywood was still unemployed and lived downstairs in the other house as she had nowhere to go with her four children. He stated further that they moved into the newly built house with Keturah.

[33] From the foregoing evidence, I find make the following findings of fact:

1. Mr Cottoy approached Ms Haywood in late 2004 and solicited her services to take care of his sister Keturah for an indefinite period.
2. He explained his intention to build a house for her and suggested that Ms Haywood could stay there with her children.
3. Ms Haywood told him also of her intentions to build her own home and the efforts she was undertaking in that regard.
4. Mr Cottoy and Ms Haywood finally settled on construction of a house by Mr Cottoy without any restrictions on Ms Haywood assisting with minor components like collecting materials from the wharf. There was no formal agreement for them to construct the house jointly but I do not get the impression that Mr Cottoy was averse to Ms Haywood using her materials in the house. After all, she and her children would have been the main beneficiaries of the facilities for the foreseeable future. In fact, I am convinced that Mr Cottoy encouraged Ms Haywood to help in what little way she could. Furthermore, he did not refuse her contributions and was well aware of all she did. Mr Cottoy did not give Mr Richards instructions to not accept other materials from Ms Haywood after he would undoubtedly have become aware of her first contributions. I do not accept that he only learnt of this after the fact, if as he said he was getting regular updates from Mr. Richards.
5. Mr Cottoy hired Mr Richards as the contractor and paid for the bulk of construction, including most of the materials and workmanship.
6. Ms Haywood contributed materials and labour to the construction (including paying Mr Agard for minor works and the painter) with Mr Cottoy's knowledge and consent. I do not accept however that she expended any sums in purchasing additional cement, blocks or sand. This was in my opinion, another attempt by Ms Haywood to embellish the facts.

7. There was an agreement between Christian Cottoy and Ms Haywood that the house was being built for Keturah's comfort and for Ms Haywood to serve as caretaker for Keturah for an extended period. In exchange Ms Haywood would enjoy rent free accommodation for an indefinite period, perhaps even for as long as Keturah lived. The period of service does not appear to have been formalized but the parties seem to have expected it to last indefinitely. These are inferences I draw from the evidence which was spotty on some details.
8. I do not find that Mr Cottoy gave Ms Haywood the understanding that she would receive a life interest unless she took care of Keturah for her lifetime.
9. Ms Haywood entered into occupation of the house with her children, including Oswald Haywood and with Keturah in 2005 but left the house around 2009 to live elsewhere.
10. Kooth Haywood and Oswald Haywood entered into occupation of the house with Mr Cottoy's consent in 2005 and were not asked to leave by Mr Cottoy until 2011 when the notice to quit was sent.
11. Oswald Haywood resided continuously at the house from 2005 until the present.
12. I do not accept that Mr Cottoy provided financial support to Ms Haywood and her family on a regular basis although I infer from all the circumstances and Ms Haywood's acceptance that he did provide periodic financial assistance in the form of groceries.
13. Ms Haywood provided "caretaker" services for Keturah between 2004 and 2009 and then stopped doing so when she left the subject house. This fact perhaps irritated Mr Cottoy and gave rise to this case. The fact is Ms Haywood abandoned her "post" for an entire year without consultation with Mr Cottoy, by which time he had already expended considerable amounts of money, which contrary to his intentions Keturah stopped benefiting from in 2010 while Ms Haywood did not.

[34] It is against this evidentiary background that the applicable law will be applied. The court enjoys a wide discretion in satisfying an equity arising under the doctrine of proprietary estoppel.^{viii} The legal principles applicable to a determination of the issue of proprietary estoppel have long been established.^{ix} They were recently expounded in the House of Lords case of **Thorner v Majors and others**.^x The elements were identified as:

1. A clear and unequivocal representation made or assurance given to the claimant;
2. Reasonable reliance by the claimant on the representation or the assurance, based on all the surrounding circumstances;^{xi}
3. Substantial detriment incurred by the claimant as a consequence of that reliance, sufficient to justify the intervention of equity.^{xii}

[35] In the case at bar Ms Haywood and Mr Haywood assert that those three elements are present. In this regard, Ms Haywood claims that Christian Cottoy assured her that she would be allowed to occupy the house for her lifetime and that her children would be allowed to live there with her for that period if she took care of Keturah and also contributed to construction of the house. I accept that Mr Cottoy promised Ms Haywood that she would enjoy rent free accommodation but that was conditional on her taking care of his sister. Seemingly, the length of her rent free occupation would be referable to the length of her service and this is entirely reasonable. I find therefore that Mr Cottoy did give Ms Haywood a clear and unequivocal promise in those limited and conditional terms.

[36] Ms Haywood's assertions that she reasonably relied on those promises is also proven. It is beyond dispute that she contributed to the construction of the house and also took care of Keturah for some time in furtherance of that agreement. The evidence is that she made payment to the workmen, paid for water and electricity supply used in the process, supplied the pipeline to the house, using up her savings to pay for some of those construction expenses. There was

nothing irrational in her acting on those assurances in that manner. She was finally realizing her dream of having a place to live in which she had some measure of control.

[37] Ms Haywood clearly suffered substantial detriment as a consequence of that reliance. She not only abandoned her desire to build her own home, she agreed to and did take care of Keturah for some time without payment other than having rent free accommodation. She also utilized the materials she had collected for building her own home, in construction of the subject house. I am satisfied that the detriment sustained by Ms Haywood is sufficient to justify the intervention of equity to estop Mr Cottoy from denying her an equitable interest in the house. It would be unconscionable to permit that. I hasten to add however that that equity falls way short of a life interest as among other things she did not fulfill her end of the agreement completely. An appropriate adjustment must be made to her interest so that equity can be done to both sides.

[38] No evidence was supplied about the size of the house or the amount expended under the building contract. There is an absence of documentary evidence except for the Deeds of Partition and Conveyance and notice to quit tendered by Mr Cottoy. There were no receipts, building contract, bills, cancelled cheques etc. to assist the court. Kooth Haywood is a very simple woman but very enterprising and shrewd. Her efforts I am convinced contributed to completion of a house in which her family and some of Mr Cottoy's relatives have sheltered and no doubt enjoyed some happy moments. The court has a duty to invoke the doctrine of proprietary estoppel to avoid an unconscionable result^{xiii} and must determine what is minimally required to do justice having regard to all pertinent facts.^{xiv} This is a fitting case in which equity demands just such a result. However, the conferment of a life interest on Ms Haywood would in all the circumstances be disproportionate to the detriment she has suffered. I find therefore that the appropriate relief would be an award of a monetary sum equivalent to her interest.

[39] Ms Haywood by taking up residence of the house with her children, expending her resources in the construction and taking care of Keturah for 4 ½ to 5 years did so for her own and her family's benefit. Mr Cottoy realized a parallel benefit since he had an interest in having someone take care of Keturah and ensuring that her personal needs for guidance, supervision and company were met. Ms Haywood deprived herself of having her own home albeit a somewhat more modest one and the opportunity to take up gainful employment elsewhere. Admittedly, the benefits she garnered by doing so did not equate with the detriment she sustained. By relying of Mr Cottoy's promises Ms Haywood did not pursue her own opportunities to construct a home for her family with assistance from the government and her children's benefactors. She would now have to start over and attempt to identify land and seek opportunities to purchase or build a house.

[40] She undoubtedly has suffered detriment and in all the circumstances, by virtue of the doctrine of proprietary estoppel, an equity in the house has been created in her favour. Ms Haywood's and her witnesses' testimony fell short of providing conclusive evidence as to the quantum of her financial contributions or the value of her material contributions to the house. She estimates this to be about \$20,000.00 which I consider to be over-stated. Based on all of the available evidence and the findings of fact above, I would discount that figure by ¼ to \$15,000.00. I have no idea how much the house is currently valued at present so I am unable to make a declaration as to the proportionate value Ms Haywood's interest in the house. Her equity in the house may however be satisfied by awarding her the sum of \$15,000.00 which will operate as a charge on the property until it is satisfied. Mr Cottoy is accordingly ordered to pay Ms Haywood \$15,000.00 in respect of her equity in the property.

[41] The court appreciates that Ms Haywood and her family will need a reasonable amount of time to make other living arrangements. I consider 6 months to be adequate. Ms Haywood, her children, servants and agents will be required to

deliver up vacant possession of the said dwelling house to Mr Christian Cottoy within six months of today's date (i.e. on or before October 29, 2015) provided that Mr Christian Cottoy has paid her the said sum of \$15,000.00 in full within 3 months of today's date (i.e. on or before July 29, 2015). Should Mr Cottoy fail to pay this sum in full to Ms Haywood by July 29, 2015, the deadline for Ms Haywood's delivery of vacant possession shall be extended proportionately. Accordingly, for each week, month or other period that payment in full is delayed, the timeline is extended proportionately by the length of the delay.

- [42] Oswell Haywood testified that he also contributed to construction of the house in the form of labour by moving sand and other materials and also by plastering the walls. Unlike Ms Haywood he does not claim an interest in the house by proprietary estoppel in his statement of case. I therefore make no finding on that issue.

Issue 2 – Does Oswell Haywood occupy the house as trespasser?

- [43] Based on the foregoing, it having been determined that Kooth Haywood has an equity in the house, and having regard to Oswell Haywood's contention that he occupies the house as Kooth Haywood's licensee I find that Ms Haywood had a sufficient interest in the house to enable her to grant him a licence. In any event, he is Kooth Haywood's son and Christian Cottoy did admit that he permitted Kooth Haywood to occupy the property with her children. The only child whom he expressly barred from living there was the eldest son. I find therefore that Oswell Haywood is not a trespasser on the property. Christian Cottoy is not entitled to an order that Kooth Haywood and Oswell Haywood quit and deliver up the dwelling house on lands described in Deed of Conveyance No. 1320 of 1987.

Issue 3 – Are Kooth Haywood and Oswell Haywood entitled to an injunction restraining Christian Cottoy from evicting them from the house?

- [44] The court is empowered to grant a permanent injunction if it is satisfied that in all the circumstances of the case that it is just and equitable to do so.^{xv} In

exercising its discretion the court must be mindful that it may grant the injunction only if Kooth Haywood and/or Oswald Haywood have an interest in the property. I have already found that Kooth Haywood has such an interest although Oswald Haywood has no such interest. They must also satisfy the court that they have acted promptly. I am satisfied that the Haywoods acted as soon as reasonably practicable in the circumstances as they filed their counterclaim within 2 months after Mr Cottoy initiated action to have them evicted.

- [45] The court will grant an injunction where there is evidence that there is a strong probability that the applicant will suffer grave damage in the future and that damages are an inadequate remedy. Neither Ms Haywood nor Mr Haywood has presented such evidence. In any event, damages would be an adequate remedy for any loss they might conceivably incur by a forced threatened or actual eviction. They have therefore not discharged the burden of proving that it is just and equitable to grant injunctive relief based on the facts of this case. I therefore dismiss Kooth Haywood's and Oswald Haywood's claim for an injunction.

Issue 4 – Is Christian Cottoy entitled to an injunction restraining Kooth Haywood and/or Oswald Haywood from remaining in the house?

- [46] Applying the principles rehearsed above, Christian Cottoy has demonstrated that he has an interest in the property. He does not appear to have delayed unduly in making a claim for an injunction as he followed up his April 2011 letter with a this claim within 6 months, a fairly reasonable length of time, considering that he might have wanted to give the Haywoods some time to relocate within the intervening period. Mr Cottoy has produced no evidence that there is a strong probability that he will suffer grave damage in the future through the Haywoods' continued occupation of the house. In any event, I am satisfied that damages would be an adequate remedy for any such probable future losses. I therefore dismiss Christian Cottoy's claim for an injunction.

ORDERS

[47] It is accordingly ordered:

1. Christian Cottoy's claim for an order that the Defendants quit and deliver up vacant possession of the house situate on lands described in Deed of Partition No. 1528 of 2013 is dismissed. It is declared that Ms Haywood's equity in the subject dwelling house is valued at \$15,000.00. Christian Cottoy is ordered to pay Kooth Haywood \$15,000.00 in respect of her equity in the property.
2. Ms Haywood, her children, servants and agents are ordered to deliver up vacant possession of the said dwelling house to Mr Christian Cottoy within six months of today's date (i.e. on or before October 29, 2015) provided that Mr Christian Cottoy pays her the said sum in full within 3 months of today's date (i.e. on or before July 29, 2015). After July 29, 2015, the deadline for Ms Haywood's delivery of vacant possession shall be extended proportionately by the length of the delay in respect of each week, month or other period that payment in full is delayed.
3. Kooth Haywood's and Oswald Haywood's claim for an injunction is dismissed.
4. Christian Cottoy's claim for an injunction is dismissed.
5. Christian Cottoy is to pay agreed costs of \$10,000.00 to Kooth Haywood and Oswald Haywood on his claim for an eviction order and injunction against them.

[48] I wish to record thanks to counsel for their written submissions.

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Esco L. Henry
HIGH COURT JUDGE (Ag.)

ⁱ **Unity Joint Stock Mutual Banking Association v King (1858) 25 Beav 72; Morris v Morris [1982] 1 NSWLR 61; Lee-Parker v Izzet (No. 2) [1972] 2 All ER 800.** See also Law Relating to Trusts and Trustees – Underhill and Hayton (1987) 14th Edition at pages 187-188.

ⁱⁱ **Raffaele v Raffaele [1962] 1 WAR 238.** See also Ibid. at pages 188 – 191 Law Relating to Trusts and Trustees.

ⁱⁱⁱ **Pascoe v Turner [1979] 2 All ER 945 CA; Dillwyn v Llewellyn (1862) 4 De G F & J 517; Thomas v Thomas [1956] NZLR 785; Re Basham [1987] 1 ALL ER 405.** See also Ibid. at pages 188 – 191 Law Relating to Trusts and Trustees.

^{iv} **Inwards v Baker [1965] 2 QB 29 CA; Greasley v Cooke [1980] 3 ALL ER 710 CA; Williams v Staite [1979] Ch. 291 CA; Maharaj v Chand [1986] AC 898 PC.** See also Ibid. at pages 188 – 193 Law Relating to Trusts and Trustees.

^v **Re Sharpe (a bankrupt) [1980] 1 All ER 198; Hussey v Palmer [1972] 3 ALL ER 744 CA; Dodsworth v Dodsworth (1973) 223 Estates Gazette 1115; Taylor v Taylor [1956] NZLR 99.** See also Ibid. at pages 188 – 193 Law Relating to Trusts and Trustees.

^{vi} Deed of Conveyance No. 1320 of 1997.

^{vii} See paragraph 6 of Christian Cottoy's witness statement filed on March 5, 2012.

^{viii} See also **Theresa Henry, Marie Ann Mitchell v Calixtus Henry [2010] UKPC 3 at para. 52 per Lord Scott where he opined:**

“52. The court enjoys a wide discretion in satisfying an equity arising under the doctrine of proprietary estoppel. In **Gillet v Holt** Lord Walker concluded that the claimants' rent-free occupation of the property had not extinguished his equity, but that in the circumstances the grant of a life-interest would be disproportionate to his legal and moral claims over the property. In the result, exercising the wide discretion to which he referred earlier, ... he concluded that the appropriate form of relief was an award of a fixed monetary sum charged on the property.”

^{ix} Ibid. in the cases cited at notes I, ii, iii, iv and v above.

^x **[2009] UKHL18 at para. 29 per Lord Scott at para. 15 where he quoted from Lord Walker's judgment in Crabb v Arun District Council [1976] Ch 179 at para 29.** endorsing Lord Walker's categorization of the elements and expanding on them.

^{xi} Supra. at **para 42 of Theresa Henry, Marie Ann Mitchell v Calixtus Henry 3 per Sir Jonathan Parker** quoting with approval dicta of **Lord Walker (Robert Walker LJ as he then was)** in **Jennings v Rice [2003] P. & C. R. 8 at para 50 and 51:**

“50. To recapitulate: there is a category of case in which the benefactor and the claimant have reached a mutual understanding which is in reasonably clear terms but does not amount to a contract. ... In such a case, the court's natural response is to fulfill the claimant's expectations. **But if the claimant's expectations are uncertain, or extravagant, or out of all proportion to the detriment which the claimant has**

suffered, the court can and should recognize that the claimant's equity should be satisfied in another (and generally more limited way).

51. But that does not mean that the court should in such a case abandon expectations completely, and look to the detriment suffered by the claimant as defining the appropriate measure of relief. Indeed in many cases the detriment may even be more difficult to quantify in financial terms than the claimant's expectations. Detriment can be quantified with reasonable precision if it consists solely of expenditure on improvements to another person's house, and in some cases of that sort an equitable charge for the expenditure may be sufficient to satisfy the equity.... Moreover, the claimant may not be motivated solely by reliance on the benefactor's assurances, and may receive some countervailing benefits (such as free bed and board). **In such circumstances the court has to exercise a wide judgmental discretion.**"(bold mine)

^{xii} Ibid. **Theresa Henry, Marie Ann Mitchell v Calixtus Henry** per Sir Jonathan Parker at para 38 quoting Lord Walker of Gestinghope (Robert Walker LJ as he then was) in **Gillet v Holt** [2001] Ch 210 at page 232 where he said:

"It matters not whether one talks in terms of detriment or whether one talks in terms of being unjust or inequitable for the party giving assurance to go back on it. It is difficult to envisage circumstances in which it would be inequitable for the party giving the assurance alleged to give rise to a proprietary estoppel, i.e. an estoppel concerned with the positive acquisition of rights and interests in the land of another, unless the person to whom the assurance was given had suffered some prejudice or detriment."

*"The overwhelming weight of authority shows that detriment is required. But the authorities also show that it is not a narrow or technical concept. The detriment need not consist of the expenditure of money or other quantifiable financial detriment, **so long as it is something substantial**. The requirement must be approached as part of a broad inquiry as to whether repudiation of an assurance is or is not unconscionable in all the circumstances."*

"... Whether the detriment is sufficiently substantial is to be tested by whether it would be unjust or inequitable to allow the assurance to be disregarded – that is, again, the essential test of unconscionability. The detriment alleged must be pleaded and proved."

^{xiii} **Knowles v Knowles** [2008] UKPC 30. See also **Jennings v Rice** [2002] EWCA Civ 159 per Robert Walker LJ cited with approval by Sir Henry Brooke in **Knowles v Knowles** [2008] UKPC 30 at para. 27:

"The essence of the doctrine of proprietary estoppel is to do what is necessary to avoid an unconscionable result."

^{xiv} See **Pascoe v Turner** endorsing the approach of Scarman LJ in **Crabb v Arun District Council** [1976] Ch 179 CA stated:

"The court must decide what is the minimum equity to do justice (to the claimant) having regard to the way in which she changed her position for the worse by reason of the acquiescence and encouragement of the legal owner."

See also Supra. **Theresa Henry, Marie Ann Mitchell v Calixtus Henry at para. 37** per Sir Jonathan Parker citing with approval dicta of **Lord Walker of Gestinghope (Robert Walker LJ as he then was)** in **Gillet v Holt [2001] Ch 210** where he said:

“... although the judgment is, for convenience divided into several sections with headings which give a rough indication of the subject matter, it is important to note at the outset that the doctrine of proprietary estoppel cannot be treated as subdivided into three or four watertight compartments.... The quality of the relevant assurances may influence the issue of reliance, that reliance and detriment are often intertwined, and that whether there is a distinct need for a ‘mutual understanding’ may depend on how the other elements are formulated and understood. Moreover the fundamental principle that equity is concerned to prevent unconscionable conduct permeates all the elements of the doctrine. In the end, the court must look at the matter in the round.”

^{xv} **Aslatt v. Corporation of Southampton (1881) 16 Ch.D. 143.**