

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

SLUHCV2006/0861

BETWEEN

HELENA FANIS

CLAIMANT

AND

**(1) HOUSING & URBAN DEVELOPMENT
CORPORATION OR NATIONAL
HOUSING CORPORATION**

**(2) EMILY CONSTANTINE represented
by PETER CLARKE**

DEFENDANTS

Appearances:

Mr. Ramon R. Raveneau for the Claimant.
Ms. Esther Greene Ernest for the First Defendant
Mr. Alvin St. Clair for the Second Defendant.

2011: October 17th,
2013: April 11th .

JUDGMENT

- [1] **WILKINSON J.:** Ms. Helena Fanis filed her claim form and statement of claim on November 10th 2006. Her claim form and statement of claim sought different forms of relief. In her claim form she sought \$11,856.10 as being monies paid to The Housing and Urban Development Corporation the predecessor of the St. Lucia National Housing Corporation (hereinafter called “the NHC”), interest, court fees and legal practitioner’s fees. In

her statement of claim she sought specific performance of the sale, general damages, costs and interest. The NHC filed a defence and counterclaim at March 30th 2007. In its counterclaim the NHC sought by way of relief vacant possession of its property, damages for use and occupation at such rate as the Court may deem just, costs and further and other relief. Ms. Emily Constantine filed her defence on October 31st 2007.

Issue

- [2] Whether Ms. Fanis is entitled to enforce the contract of sale for Lot 17 between the NHC and herself.

The evidence

- [3] The NHC owns land at Barnard Hill, Conway in the Quarter of Castries and upon the land there resided a large number of squatters. The squatters included Ms. Fanis, Ms. Constantine (deceased at January 2002) and Mr. Peter Clarke, the grandson of Ms. Constantine. Two (2) of the identified Lots of land are Lot 16 and Lot 17. Lot 16 and Lot 17 are identified in the Land Register as Blocks and Parcels 0848D 735 and 0848D 736 respectively.
- [4] According to Mr. Nicholas Faisal, the managing director of the NHC, the NHC is engaged in the development and sale of land at Saint Lucia and at the material time the NHC's predecessor in the early 1980s had a policy to sell to the squatters the land upon which their chattel house was constructed and no person was to be sold more than one (1) Lot. In the early 1980s, a decision was made to implement the policy by offering for purchase to the squatters the spots upon which they resided. The thrust of the policy was to regulate land ownership and to afford the squatters an opportunity to own land at a reasonable price. That decision led to a project which required the NHC's predecessor to examine the location as a whole.

[5] Barnard Hill/Darling Road was heavily populated and in pursuance to the project, an assessment and survey was done for feasibility purposes and to establish the names of persons in occupation and the extent of their occupation. Under the project there was surveyed and marked out Lot 16 and Lot 17. Lot 17 measured 1,227 square feet. Lot 17 was allocated to Ms. Fanis.

[6] At December 1st 1992, the NHC wrote to Ms. Fanis as follows:

“Helena Fanis

...

Re: CONWAY/BARNARD HILL/DARLING ROAD
PROJECT

The Housing & Urban Development Corporation will shortly be developing the area you occupy. The land that you occupy will be sold to you as soon as the survey works are completed, when formal agreements will be provided.

In order to secure your lot and to show your commitment towards purchase, you are required to pay before the 20th of December 1992, a deposit of \$1500.00 which will be credited to the purchase price of the lot.

This amount is to (be) paid to C.I.B.C. Account No. 92000-19 and the receipt is to be taken to the office of the U.D.C. on High Street.

Your cooperation in this matter will be appreciated.

Yours faithfully,

(signed)

Adrian Dolcy
GENERAL MANAGER

[7] At December 2nd 1992, one (1) day later, Ms. Fanis paid to the NHC's predecessor the sum of \$1500.00 against the purchase of her Lot. She received a receipt for her payment and the Court was given sight of it.

[8] At August 10th 1993, approximately eight (8) months later, the NHC's predecessor sent Ms. Fanis a further letter which read:

"10-8-93

...

Reference No. 3723

Helena Fanis

Type A1 (land only)

...

Dear Madam,

LOT NO: 17 Phase... PROJECT AREA Barnard Hill

BLOCK...PARCEL....

RE: LOT PURCHASE....

This letter serves to confirm the arrangements made today for you to purchase the above lot.

1. The lot measures 1227 square feet and the purchase price \$6,135.- EC
2. A deposit of \$1500.00 is to be paid within 14 days.
3. Within 60 days, you will complete the purchase by paying the balance which is \$4,635.- , whereupon the Corporation will sign the Deed of Sale to you of the said lot free and clear of all encumbrances save the standard covenants, reservations and grants of right of way.
4. Please note that the sale of the lot would be effected subject to the following conditions:
 1. The use of the land will be restricted.
 2. The building of a house on the property must take place within 3 years in accordance with plans approved by the Development Control Authority.
 3. In the event of resale of the property the Corporation must have the first option to purchase the property.

- 5 Your failure to comply with the terms above will result in the Corporation taking whatever action it deems necessary.

Yours faithfully

(signed)
GENERAL MANAGER

I agree to the above terms and conditions.

(signed by Francis James)
SIGNATURE OF PURCHASER

- [9] On the same day, August 10th 1993, Ms. Fanis paid \$4,635.00 to the NHC's predecessor and she was given a receipt. The Court was given sight of the receipt. In compliance with the NHC's predecessor's requests, Ms. Fanis had paid in full the cost for Lot 17 within the time stipulated.
- [10] According to Mr. Faisal, Ms. Fanis' house was partially constructed of concrete and wood.
- [11] Ms. Constantine who occupied a small chattel house on Lot 17 challenged the sale of Lot 17 to Ms. Fanis and by Mr. Peter Clarke pursuant to the Land Registration Act Cap. 5:01 filed a Caution, instrument #2812/95 claiming an interest as a proposed purchaser. Lot 17 could not be transferred without the Caution being removed.
- [12] According to Mr. Faisal up to the date of her death, Ms. Constantine had not paid any rent during her occupation of Lot 17 nor was there any sale agreement executed with Ms. Constantine and therefore she had not acquired any legal or beneficial interest in the NHC's land.
- [13] The NHC's predecessor thought that a prudent approach to the challenge by Ms. Constantine was to have a surveyor visit, inspect the property and advise a solution and in that regard Mr.

Ronald Polius, a licenced land surveyor visited Lot 17, made an assessment and prepared a report. In his report, Mr. Polius recommended that Lot 17 be divided equally between Ms. Fanis and Ms. Constantine so that each would receive 613.5 square feet. Such small subdivision however, according to Mr. Faisal was subject to acceptance by the Development Control Authority and the Ministry of Health. The NHC's hands Mr. Faisal said were tied as it could not agree or direct the division of Lot 17 unless approval was obtained from the Development Control Authority and the Ministry of Health.

- [14] In Mr. Faisal's opinion the houses were so close that neither Ms. Fanis nor Ms. Constantine could enjoy any privacy.
- [15] The NHC Mr. Faisal said remains committed to resolving the matter with Ms. Fanis and its failure to act has been due to the Caution.
- [16] Under cross-examination Mr. Faisal said that Ms. Constantine had not received an offer or agreement for sale in writing from the NHC's predecessor for Lot 17 and neither had she paid any deposit with reference to Lot. 17.
- [17] Under cross-examination Ms. Fanis said that she moved from Pavee to Barnard Hill, a place she frequently visited before moving there. When she moved to Barnard Hill there were two (2) houses on the Lot now identified as Lot 17 and they were owned by a gentleman (Mr. Clarke identified him as Mr. Barnard). Ms. Constantine was occupying one (1) of the houses and the gentleman offered to sell her the second (2nd) unoccupied house; she purchased the house offered for purchase to her. Ms. Fanis was not aware that Ms. Constantine had lived in the house now occupied by her.
- [18] Ms. Fanis said that she observed when she moved to Barnard Hill, Ms. Constantine owned two (2) houses. The two (2) houses

were not on the same Lot. One (1) house was on Lot 17 and the other house was on an adjoining Lot now Lot 16. All the houses were very close together.

- [19] Ms. Fanis said a representative of the NHC's predecessor visited her in person to inquire if she wanted to purchase the land and told that if she did, she was to pay \$1500.00 as a deposit and this she did. The NHC's predecessor representative visited a 2nd time and she was at that time told that the NHC's predecessor was ready to sell the Lots and she was to pay the balance due and thereafter she would receive her deed of transfer within six (6) weeks. Her contract of purchase of Lot 17 is the letter dated August 10th 1993, cited prior. Ms. Fanis having complied with all the payment requirements, she went to collect her deed and at that time the NHC's predecessor general manager told her that he was not going to be able to give her the deed of transfer for Lot 17 because he wanted to give Lot 17 to Mr. Peter Clarke. She was offered an alternative Lot in the country, she was not told exactly where. She did not accept the alternative Lot because she had already paid the NHC's predecessor for Lot 17 on which she was established. Ms. Fanis also said that she was aware of the NHC's predecessor's policy not to sell two (2) Lots to one (1) person.
- [20] Under cross-examination, Ms. Fanis said that the NHC's predecessor did not offer to return her money.
- [21] On re-examination, Ms. Fanis said that when she moved to Barnard Hill, Ms. Constantine was not actually living at Barnard Hill but at La Pansee and she used to operate a small shop in the little house on Lot 17. According to Mr. Fanis, Ms. Constantine used to rent to various persons her house on Lot 16, Mr. Peter Clarke now lives in the house on Lot 16.
- [22] Mr. Peter Clarke gave evidence on behalf of his now deceased grandmother, Ms. Constantine. He said that Ms. Constantine

was in occupation of her small house on Lot 17 in excess of ten (10) years before Ms. Fanis came to Lot 17. His description of Ms. Constantine's house was that it was partly of concrete and partly of wood. This description conflicts with Mr. Faisal who said that Ms. Constantine's house was constructed only of wood.

[23] Mr. Clarke at November 1993, brought Mr. Adrian Dolcy of the NHC's predecessor to visit with Ms. Constantine to discuss her house on Lot 17 and he remained present during the course of their conversation. Ms. Constantine was ninety-two (92) years at the time. According to Mr. Clarke, Mr. Dolcy accepted that Ms. Constantine had been in occupation ten (10) years prior to Ms. Fanis and promised to sell Lot 17 to Ms. Constantine.

[24] According to Mr. Clarke, Ms. Constantine used to live in the house which Ms. Fanis purchased and now occupies. Ms. Constantine had rented that house from Mr. Bernard. Subsequently, she purchased the 2nd chattel house on Lot 17, leaving the other one empty. In 1992 the NHC's predecessor wrote to Ms. Constantine through him offering the said Lot for purchase and requesting the deposit of \$1500.00 be paid, and it was paid. The letter disclosed by Mr. Clarke was addressed solely to him with no reference to Ms. Constantine or a Lot number.

[25] Mr. Clarke said that in pursuance of the NHC's predecessor promise to sell Ms. Constantine Lot 17, the NHC's predecessor offered Ms. Fanis an alternative Lot in another of the NHC's predecessor's developments.

[26] Mr. Clarke said that it was due to the promise to sell to Ms. Constantine Lot 17, that she placed a Caution on Lot 17 and she had successfully resisted an application by the NHC's predecessor to remove it.

- [27] Under cross-examination Mr. Clarke said that Mr. Adrian Dolcy at November 1993, when he visited Ms. Constantine had said that he accepted that she was in possession for more than ten (10) years and so had a superior claim to Ms. Fanis.
- [28] Under cross-examination, Mr. Clarke denied that Ms. Constantine ever resided at La Pansee and said that from the time he was about ten (10) years, Ms. Constantine occupied the house now occupied by Ms. Fanis.
- [29] Under cross-examination, when asked “when you look at your witness summary are you saying that the offer made to Ms. Constantine was made orally or in writing? He answered that at the time no offer of either Lot whether 16 or 17 was mentioned. When the question was repeated he said that at 1993, Mr. Dolcy made the offer in writing.
- [30] Under cross-examination it was put to Mr. Clarke that he had said in his witness summary that Ms. Constantine had paid at December 1992, \$1500.00 and this was prior to Mr. Dolcy’s visit at November 1993, and the alleged offer of Lot 17. Mr. Clarke agreed that the money was been paid at December 1992.
- [31] Under cross examination, Mr. Clarke said that apart from Ms. Constantine’s occupation of Lot 17, he occupied the house on Lot 16 in his own right.
- [32] Under cross-examination Mr. Clarke agreed that the NHC’s predecessor’s letter which he disclosed was firstly, dated December 1st 1992, secondly, addressed to him personally and thirdly, the receipt of \$1500.00 which he disclosed was dated December 24th 1992, and all of these items were before Mr. Dolcy’s visit at November, 1993 and the alleged promise to sell Lot 17 to Ms. Constantine.
- [33] There was an exchange of correspondence between Ms. Constantine, Mr. Peter Clarke and the NHC’s predecessor about

repairs to the house occupied by Ms. Constantine. The NHC's predecessor while it was prepared to permit repairs to be carried out, it stated in clear terms that the repairs were only to be carried out in wood and not to be in the nature of any permanent structure.

- [34] The NHC's predecessor also wrote to Ms. Fanis cautioning her against putting up any permanent structure while the dispute with Ms. Constantine for Lot 17 remain unresolved.
- [35] The Court was given sight of a Canadian Imperial Bank of Commerce deposit slip with the account name stated to be Urban Development Corp but the date, name of depositor and amount were illegible; there was affixed the Bank's stamp with initial and date written on it of December 24th 1992. Because the amount and name of depositor are not legible to the Court this slip is of little use.
- [36] The Court was also given sight of a document dated December 23rd 1992, issued by the NHC's predecessor. The document had recorded thereon (a) the words "Deposit only" on the top outside border of it, but no sum was shown, (b) name: Peter Clarke, (c) address: P.O..Box 1360, (d) location of lot :Conway/Barnard Hill, (e) Phase: not applicable, (f) lot: to be determined when surveyed, (g) Block and Parcel number: are completed, and (h) note: AN 92?08-19. The document was signed by the General Manager.
- [37] Some of the correspondence between the NHC's predecessor, Ms. Constantine and Mr. Clarke is instructive and so the Court cites them in their entirety.
- [38] At April 18th 1984, Ms. Constantine wrote to the NHC's predecessor as follows:

“

Mrs. Emily Constantine
21 Barnard's Hill
Castries
18th April 1984

The Acting Manager
Urban Dev. Corp.
Brazil St.
Castries.

Dear Sir,

A survey of the land at Barnard Hill in the vicinity of Castries had (has) been carried out sometime. The names of the occupants had (has) been recorded. I understand that on completion of the survey, a proposed scheme of putting the lots for sale will become effective.

In view of the above, I wish to draw your attention to the fact that I occupy allot (a lot) with my house on it and I have been residing at Barnard Hill for the past thirty-one (31) years.

I hereby apply for the purchase of the said lot mentioned above. I hope that my application will receive your kind consideration which it deserves.

Thanking you in advance,
Yours Faithfully

(signed – Emily Constantine)

[39] Mr. Clarke disclosed an identical letter written by him on the same date save that he stated that he had resided at Barnard Hill for twenty-nine (29) years. There was no reference to Ms. Constantine in this letter.

[40] At February 5th 1991, the NHC's predecessor wrote to Mr. Peter Clarke as follows:

"5th February 1991

Mr. Peter Clarke
Barnard Hill
Castries

Dear Sir,

Please be informed that the land which you presently occupy at Barnard Hill is vested in the Housing and Urban Development Corporation.

Until a firm decision is made as to your continued occupation of the land you are not to carry out any permanent repairs on the land or to carry out any works which would interfere with the access of adjacent residents.

Yours faithfully

(signed - Adrian Dolcy)

General Manager

c.c. Executive Secretary – D.C.A.

[41] At December 1st 1992, the NHC's predecessor wrote to Mr. Peter Clarke the following:

"DATE. 1ST December 1992

Peter Clarke
Post Office Box 1360
Castries

RE: CONWAY/BARNARD HILL/DARLING ROAD
PROJECT

The Housing & Urban Development Corporation will shortly be developing the area that you occupy. The land that you occupy will be sold to you as soon as survey

works are completed, when formal agreements will be provided.

In order to secure your lot and to show your commitment towards purchase, you are required to pay before the 20th of December 1992, a deposit of \$1500. which will be credited to the purchase of the lot.

This amount is to be paid to C.I.B.C. Account No. 92008-19 and the receipt is to be taken to the office of the U.D.C. on High Street.

Your cooperation in this matter will be appreciated.

Yours faithfully

(signed - ADRIAN DOLCY)
GENERAL MANAGER

[42] At February 17th 1998, Messrs. Bledman & Riviere wrote to Mr. Leroy W. Frederick, the Deputy Registrar of Lands as follows:

“ 17th February, 1998

Leroy W. Frederick
Deputy Registrar of Lands
Land Registry
Ministry of Finance & Planning
Castries.

Re: Removal of Caution
Block 0848 Parcel 736

Dear Sir,

We act for Mrs. Emily Constantine of Barnard Hill, Conway who has been given notice of your intention to remove the caution placed on the parcel of land known as Block 0848 D parcel 736 at her instance on the ground that the Agreement of sale dated 1st December, 1992 and the receipt of Deposit for the sum of \$1,500.00 dated 23rd December, 1992 do not refer to Emily Constantine the occupier of lot 16 Block 0848 D Parcel 735.

Mr. Peter Clark is the grandson of Emily Constantine and has handled all her affairs after the amputation of both her legs and old age.

The land under caution is the subject of a dispute caused by an error during the survey of the lots by the Housing and Urban Development Corporation.

What are now described as lots No.16 and 17 were occupied by Emily Constantine now aged 96, for the whole of her life.

Emily Constantine gave the house on Lot 16 to her grandson Peter Clarke. (My emphasis)

As a result of the error in describing the rightful occupants of Lot 17 an agreement for sale of that lot was given to Helena Fanis and not to Emily Constantine.

The matter was brought to the attention of the Housing and Urban Development Corporation and we are instructed that an alternate lot was offered to Helena Fanis but the necessary correction has not been made.

The correspondence, beginning with the application of 18th April, 1984, has all be in the name of Emily Constantine either signing on her own behalf or by Peter Clarke for her.

The D.C.A's acknowledgement of the application names Emily Constantine but the letter of 1st December, 1992 from Adrian Dolcy giving instruction for the payment of the deposit is addressed to Peter Clarke and thus began the confusion which has given rise to Mr. Larcher's application for removal of the caution.

The applicant for the purchase of land was Emily Constantine and at all time Peter Clarke acted on her behalf.

This matter was the subject of an investigation and our client was led to believe that her claim would be confirmed in writing but it was a surprise to her to receive your correspondence of 26th January, 1998.

Accordingly we are instructed to resist any attempt to remove the said caution.

Yours faithfully
BLEDMAN & RIVIERE

Per.....(Signed).....

c.c. The General Manager,
Housing & Urban Development Corporation”

- [43] At March 23rd 1998, the NHC’s predecessor wrote to Messrs Bledman & Riviere, Counsel for Mr. Clarke and Ms. Constantine. The letter read as follows:

“March 23rd 1998

Bledman & Riviere
Barristers, Solicitors
Notaries Royal
Brazil Street
Castries

Dear Sir

RE: PETER CLARKE

We wish to advise that the Corporation was always under the impression that Peter Clarke was the representative of Emily Constantine. Hence all correspondence addressed to Peter Clarke since December 1992 was inadvertently written to him in that capacity, and to that end when Lot#16 was allotted to him it was intended for Emily Constantine.

Further the Corporation never had any intention of denying Ms. Constantine her interest in Lot #16 Block 0848 D Parcel 735, and accordingly acknowledges her interest.

We therefore confirm that Lot #16 has been assigned to Ms. Constantine and her interest is hereby protected. (My emphasis)

Please be guided accordingly.

Yours faithfully

HOUSING & URBAN DEVELOPMENT CORPORATION

(signed - JOSEPH ALEXANDER)
GENERAL MANAGER”

The Law

- [44] Addressing first, the law applicable to the matter of Ms. Fanis' claim form and statement of claim seeking different relief, the Court observes that The Eastern Caribbean Supreme Court (St. Lucia) Act Cap. 2:01 provides:

“17. EXTENT OF REMEDIES

The High Court and Court of Appeal respectively in exercise of the jurisdiction vested in them by this Act, shall, in every cause or matter pending before the Court, have power to grant, and shall grant, either absolutely or on such terms and conditions as the High Court or Court of Appeal may think just, all the remedies or relief whatsoever to which any of the parties appear to be entitled in respect of any and every claim properly brought forward by him or her or them respectively in the cause or matter; so that, as far as possible, all matters in controversy between those parties respectively may be completely and finally determined, and all multiplicity of proceedings concerning any of those matters avoided.”

- [45] That the Court has a discretion to grant relief which was not sought by a Party but which the Court may deem appropriate is also seen at CPR 2000 rule 8.6 which provides:

“ 8.6 (1) The claimant must in the claim form –

(a) include a short description of the nature of the claim;

(b) specify any remedy that the claimant seeks;
and

(c) ...

(2) Notwithstanding paragraph (1) (b) the court may grant any other remedy to which the claimant may be entitled...

8.7(1) The claimant must include in the claim form or the statement of claim a statement of all facts on which the claimant relies.

(2) The statement must be as short as practicable.”

[46] The Court believes that the Land Registration Act Cap. 5.01 sections 28 and 37 on overriding interest and subsequent dealings can also assist in consideration of the facts. Section 28 provides:

“28. OVERRIDING INTERESTS

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

(a) ...;

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

37. SUBSEQUENT DEALINGS

(1) No land, lease or hypothec registered under this Act shall be capable of being disposed of except in accordance with this Act, and every attempt to dispose of such land, lease or hypothec otherwise than in accordance with this Act shall be ineffectual to create, extinguish, transfer, vary or affect any right or interest in the land, lease or hypothec.

(2) This section shall not be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest in land unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him or her lawfully authorised...

[47] The Saint Lucia case Civil Appeal No. 24 of 2001 **Ulina Jennifer George v. Hilary Charlemange** is instructive on the interpretation of section 28. There Byron CJ (as he then was) said:

“[15] Counsel for the appellant argued that Mr. Charlemange's claim to an overriding interest should fail because mere occupation could not be sufficient in law to make valid what is inherently invalid. He relied on the dicta in **Paddington Building Society v. Mandelion**. What Counsel failed to recognize is that it was not mere occupation that was relied on to create any rights. What the Act protected were the rights that some one who was in occupation actually had. The rights that were being relied on in this case were the rights that resulted from being a purchaser of land who had taken possession of the land as owner without registering his interest. I think that the law is quite clearly established that such rights are protected under section 28[g]. The fact that section 28[g] protects the rights of a person who is in actual occupation of land as a purchaser who title was not registered, has received specific judicial approval in the case of **Spiricor of St. Lucia Ltd. v. Attorney General of St. Lucia and Another** (1997) 55 WIR p.123 where in the opinion of the Privy Council the following is stated:

‘in my view although the section does not refer to the equitable interest of a purchaser whose title has not been registered as an overriding interest, it could and should be included among those equitable rights which are treated as overriding if the purchaser is in actual occupation. This has been the construction given to similar provisions in the English land registration legislation. Given occupation i.e. presence on the land, I do not think that the word “actual” was intended to introduce any additional qualification, certainly not to suggest that possession must be “adverse”: it merely emphasises that what is required is physical presence, not some entitlement in law.”

[48] The Civil Code articles 954 et seq. are also applicable to the sale of land and so the Court must consider them. They provide:

954. Contracts produce obligations, and sometimes have the effect of discharging or modifying other contracts.

They have also the effect in some cases of transferring the right of property.

They can be set aside only by the mutual consent of the parties, or for causes established by law. (My emphasis)

955.

956. The obligation of a contract extends not only to what is expressed in it, but also to all the consequences which, by equity, usage or law, are incident to the contract, according to its nature.

957. **A contract for the alienation of a thing certain and determinate makes the purchaser owner of the thing by the mere consent of the parties. Movables must be delivered in order to affect third parties, and in the case of immovables there must be a deed of sale, or memorandum in writing, stating the conditions of the sale.** My emphasis.

958. ...

959. ...

960. Such of the rules of this section as are applicable to immovable property are subject to the provisions respecting registration as regards their effect upon third parties.

[49] On the facts before the Court, the Court is also called upon to consider whether the doctrine of estoppel is applicable in all the circumstances. The doctrine being a fundamental principle in equity with its focus being to prevent unconscionable behavior/conduct, the Courts have since **Ramsden v. Dyson L.R. 1 H.L. 129** broadened their approach in considering the matters for a finding of estoppel whether it be described as proprietary estoppel, estoppel by acquiescence, estoppel by encouragement.

[50] In the Saint Lucia Privy Council case (1)**Theresa Henry** (2)**Marie Ann Mitchell v. Calixtus Henry** [2010] UKPC 3 Sir Jonathan Parker said:

“37. In **Gilbert v. Holt** [2001] Ch 210 Lord Walker of Gestingthorpe (Robert Walker LJ, as he then was) discussed the nature of the doctrine of proprietary estoppel and the general principles underlying that doctrine. In the course of his judgment in that case Lord Walker said (ibid p. 225 C-E):

‘... 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. Both sides are agreed on that, and in the course of the oral argument in this court it repeatedly became apparent that 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.’

38. Later in his judgment, under the heading “Detriment”, Lord Walker said this (ibid. p. 232 A-F):

‘Both sides agree that the element of detriment is an essential ingredient of proprietary estoppel. There is one passage in the judgment of Lord Denning MR in **Greasley v. Cooke**... which suggests that any action in reliance on an assurance is sufficient, whether or not the action is detrimental. In **Watts v. Storey** [[1983] CAT 319] Dunn LJ (who was a party to the decision in **Greasley v. Cook**) explained Lord Denning MR’s observations as follows:

‘Nor, if that passage from Lord Denning MR’s judgment is read as a whole, was he stating any new proposition of law. As the judge said, it matters not whether one talks in terms of detriment or whether one talks in terms of it being unjust or inequitable for the party giving the assurance to go back on it. It is difficult to envisage circumstances in which it would be inequitable for the party giving an assurance alleged to give rise to a proprietary estoppel, i.e. estoppel concerned with the positive acquisition of rights and interest in land of another, unless the person to whom the assurance was given had suffered some prejudice or detriment.’ (My emphasis)

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 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 must be pleaded and proved.” (My emphasis)

[51] In **Voyce v. Voyce** (1991) 62 P & R 290 C.A Nicholls LJ said:

“The extent to which the landowner is precluded or estopped depends on all the circumstances. Regard must be had to the subject matter of the dispute, what was said and done by the parties at the time and what has happened since.”

[52] In **Taylor Fashions Ltd. v Liverpool Victoria Trustees Co. Ltd** [1991] 1 AER 897 (HC) Oliver J. as he then was, stated the requirements of promissory estoppel in a “common expectation” as:

“If A, under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection by him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation.”

Findings and analysis

[53] The Court has observed that Counsel for the three (3) Parties filed closing submissions citing law and authorities but no copies of the items were provided to the Court as part of the closing submissions. The Court reminds Counsel that it is their duty to provide the Court with copies of the law and authorities referred.

[54] This is indeed a very unfortunate situation and as these land matters go, one which no doubt has brought undue stress to both Ms. Fanis and Ms. Constantine as it has lingered by the date of trial some eighteen (18) years without resolution. Indeed, Ms. Constantine has passed away and Ms. Fanis can no longer

in the Court's opinion be described as a young woman when the Court saw her.

- [55] Counsel for Ms. Constantine raised in submissions the issue of Ms. Fanis' claim form and statement of claim seeking different remedies. This matter was observed by the Court at paragraph 1 above. Counsel for Ms. Constantine referred the Court to the CPR 2000 rules and authorities on pleadings. As the Court understands, pleadings do not include matters of remedies or vice versa. Pleadings are a description of the claim – see rule 8.6(1) (a) and are facts upon which the claimant relies – see rule 8.7 (1). Remedies are what Ms. Fanis seeks as relief arising from the facts of her claim.
- [56] In any event, the Eastern Caribbean Supreme Court (Saint Lucia) Act section 17 and the CPR 2000 rule 8.6(2) provide that notwithstanding whatever remedy Ms. Fanis seeks, the Court has a discretion and may grant any other remedy to which Ms. Fanis is entitled so as to bring conclusion to the matter. Admittedly it would have been tidier if both the claim form and statement of claimant sought the identical remedies, their present state though is not enough for the Court to fail to provide Ms. Fanis with whatever remedy the Court deems appropriate.
- [57] The Court believes that the root of the problem between Ms. Fanis and Ms. Constantine was the NHC's predecessor. The NHC's predecessor was in the "driver's seat" so to speak as it owned the land, and it controlled the application of its policy on distribution to the squatters such as Ms. Fanis, Ms. Constantine and Mr. Peter Clarke.
- [58] Ms. Fanis had stated that Ms. Constantine owned two (2) houses on two (2) different Lots (now Lot 16 and Lot 17), this is confirmed in the letter of Messrs. Bledman & Riviere dated February 17th 1998, which states that Ms. Constantine gave one (1) of her houses to Mr. Clarke. The Court is of the view that

notwithstanding that NHC's predecessor had application letters from both Ms. Constantine and Mr. Peter Clarke dated April 18th 1984, it failed and was negligent in determining when it was dealing with Mr. Peter Clarke's claim in his own right based on allegedly twenty-nine (29) years occupation and with him as agent of Ms. Constantine based on allegedly thirty-one (31) years occupation.

[59] The Court observed during the trial that the NHC offered no evidence to support the relief is sought in its counterclaim i.e. vacant possession and damages for use and occupation and to the contrary Mr. Faisal said that the NHC remained committed to resolving the matter with Ms. Fanis and the only reason that it had failed to act was because of the Caution. The NHC's counterclaim will therefore struck out.

[60] Both Ms. Fanis and Ms. Constantine were squatters. There was no authority provided to the Court which said that the longest standing squatter acquired any preference against the landowner, the NHC's predecessor. Both remained squatters in the eyes of the law. The Court therefore does not believe that it can concern itself with a consideration of how long either Ms. Fanis or Ms. Constantine resided on Lot 17. The Court's role is not to enforce an unwritten policy. Indeed by the time the matter reached the Court there was an executed contract between Ms. Fanis and the NHC's predecessor and Ms. Fanis had paid all monies requested pursuant to the contract.

[61] There were no questions raised as to the validity of the contract for Lot 17 between Ms. Fanis and the NHC's predecessor. There has been compliance with the Land Registration Act section 37 and the Civil Code as the contract is in writing. There has been no consent of the Ms. Fanis to set aside the contract, she is in occupation and she paid all of the purchase monies promptly on demand for the purchase of Lot 17. These being

the facts, on the authority of **Ulina Jennifer George v. Hilary Charlemange** the Court is of the view that Ms. Fanis has acquired an overriding interest in the land.

[62] Should the Court be wrong in its position that Ms. Fanis has acquired an overriding interest in Lot 17, the Court is of the view that the doctrine of proprietary estoppel is applicable against the NHC and its predecessor when the Court considers all the circumstances. To repeat, Ms. Fanis was in occupation as a squatter, she was first called upon to pay a deposit of \$1500.00 to show her interest in Lot 17, and this she paid promptly, after survey, approximately eight (8) months later, she was sent a simple form of contract for purchase of Lot 17 setting out the covenants to run with the land, the balance due for payment of the land and a stipulated period for payment of the balance of monies. She executed the contract and paid the monies requested to complete the contract once again promptly. Ms. Fanis continues to reside on the land. Applying the principles set out in the cases cited, there was a clear expectation of ownership of Lot 17 set up by the NHC's predecessor, and obvious detriment to Ms. Fanis which included a threat of relocation to some other development in the country.

[63] In the Court's view it would be unconscionable to allow the NHC to avoid the contract or relocate Ms. Fanis to some other NHC development.

[64] The Court feels further justified in its decision in favour of Ms. Fanis because firstly, according to Mr. Clarke, it was at November 1993 that Mr. Dolcy visited with Ms. Constantine and made her the promise of Lot 17 but by this time, Ms. Fanis had paid for Lot 17 in full since August 10th 1993. Secondly, while Mr. Clarke has disclosed a bank deposit slip which is illegible to the Court but which for the moment the Court is prepared to accept was a deposit of \$1500.00, it being stamped at

December 24th 1992, it is a deposit made before Mr. Dolcy's visit with Ms. Constantine at November 1993, and at which time it is alleged there was a promise to sell her Lot 17. Mr. Clarke never explained how the \$1500.00 came to be paid prior to the promise. The Court doesn't believe that anyone can simply send an individual a deposit on his property because they are interested in it without a promise to sell and thereafter seek to force that person to sell them the property.

- [65] At this juncture the Court recalls that Mr. Clarke had an identical letter of application for Lot 16 before the NHC's predecessor, that the NHC's predecessor's letter of March 23rd 1998, wherein it is stated that (i) when the NHC's predecessor corresponded with Mr. Peter Clarke in his name only, it believed that it was doing so in his capacity as agent for Ms. Constantine, (ii) when the NHC's predecessor allotted Lot 16 it was intended for it to be for Ms. Constantine, and (iii) Ms. Constantine's interest in Lot 16 was acknowledged.
- [66] Mr. Clarke's application and claim for Lot 16 clearly was in conflict with the NHC's predecessor's assignment of Lot 16 to Ms. Constantine. There was also no offer letter to Mr. Clarke or Ms. Constantine dated November 1993 or beyond disclosed by Mr. Clarke and so no support for his statement that Mr. Dolcy made the offer to Ms. Constantine in writing of Lot 17.
- [67] Judgment is entered for Ms. Fanis. This matter has lingered too long and so the NHC and Mr. Clarke will be given a short time to take the necessary actions to ensure that Ms. Fanis obtains a free and clear title to Lot 17 and her transfer of title deed.
- [68] The NHC's counterclaim is struck out as no evidence was laid before the Court to support it.
- [69] Finally, the Court sincerely apologizes to Counsel and the Parties for the delay in delivering this judgment.

[70] Court's order:

1. The NHC's counterclaim is struck out.
2. The Caution on Lot 17 is to be removed forthwith by the Registrar of Lands.
3. Mr. Peter Clarke as Representative of Ms. Constantine in this suit and any other person if appointed as Representative/Executor of the Estate of Ms. Constantine is to remove from Lot 17 the house wherein Ms. Constantine used to reside while she was alive, its contents and disconnect all utilities within thirty (30) days and failing which the NHC is to carry out the order directed to Mr. Clarke and the Representative/Executor within thirty (30) days thereafter or by the expiration of sixty (60) days after this judgment.
4. The NHC is to within thirty (30) days prepare and deliver to Ms. Fanis a deed of transfer vesting title to Lot 17 in its entirety in Ms. Fanis.
5. Interest at the rate of 6 percent is to be paid on the sum of \$6,135.00 from August 10th 1993 to the date of this judgment to Ms. Fanis within thirty (30) days.
6. Costs in the sum of \$7,500.00 is awarded to Ms. Fanis and is to be paid by the NHC within thirty (30) days.

Rosalyn E. Wilkinson
High Court Judge