

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO. : ANUHCV 2011/0541

BETWEEN:

CHARLESWORTH THEOPHILUS HARRIGAN
As Administrator of the Estate of
SELVIN HARRIGAN a.k.a. SELDON THEOPHILUS HARRIGAN, Deceased

Claimant

AND

GWENDOLYN KING

Defendant

Appearances:

Ms. E. Deniscia Thomas for the Claimant
Ms. Kema Benjamin for the Defendant

2012: July 31
September 10

THE CLAIM

[1] **Thomas W.R. Astaphan J.:** This is a Claim for the following Reliefs:

- a) "Possession of land registered and described as: Registration Section: Bendals; Block: 51
1887C; Parcel: 14
- b) Damages for trespass
- c) Interest on any amounts found due to the claimant
- d) Legal Fees

- e) Costs
- f) Any other remedy as to the Court seems just.”

THE FACTS

[2] The facts in this Claim are “hotly” disputed.

[3] The Claimant, in his Witness Statement (which had been deemed to be evidence-in-chief), and in his oral comments thereon, stated the following:

- i). That he is the lawful son of Selvin Harrigan, also known as Seldon Theophilus Harrigan, late of Bendals Village in the Parish of St. Mary island of Antigua, in the State of Antigua and Barbuda, and is entitled to a share of his estate.
- ii). That the Defendant, whom he knew since he was eight years old, and her children live in houses on Parcel 14 despite the fact that, as Personal Representative of his father’s Estate, he has served upon them Notice to Quit.
- iii). That the Defendant was a bare Licensee of his father, and therefore that Licence terminated with his father’s death and, at any rate, when the Notice to Quit was served.
- iv). That after his father died in April, 2007, the Defendant’s daughter, Jamica, built a house on Parcel 14 and, the Defendant caused a house to be built thereon for her handicapped son Swain.
- v). That the Defendant first entered upon the land as an invitee of his father, then sometime after she brought two of her children, namely Swain and Magda, to live with them at Bendals Village. He alleges that Jamica lived elsewhere until after his father died in April, 2007.

- vi). That he lived with his father and grandmother at Bendals Village until he was five years old when, after his grandmother died, he went to live with his aunt and her family at Bendals Main Road.
- vii). That he enjoyed a very good relationship with his father and would visit him every afternoon after school, and would visit him on weekends and on holidays. Sometimes he would stay overnight, but most times he went home to Bendals Main Road late in the evening and would return early the next morning.
- viii). That if he slept at his father's home, he would sleep in his late grandmother's room. The Defendant would sleep in a chair in the living room, and her children would sleep in a room in the yard that was used to store his toys when he was a boy.
- ix). That as an adult he would, from time to time, buy food, Complan, Ensure, Dutch Lady milk powder and Locozade for his father.
- x). That his father would always say that the property belonged to his [the Claimant's] grandmother, and he [his father] came and, got it [the property] and when "...he gone the property will come to me. He used to say, nobody can come in front of you – referring to me. That is why I know to myself that no such contract as alleged by [the Defendant] could have existed. "
- xi). At paragraph 15 of his Witness Statement the Claimant says this: "...I know that Gwendolyn King and my father had a relationship. She is not his wife and she does not have any children for him. They were merely man and woman living together."
- xii). "I don't have no notice of [Bernard Warner living with his father, the Defendant, and her children from 2006 to 2007]. All I know that when I go to visit my father I see him there. Mrs. King has a disabled son and I see Mr. Warner talking, skylarking watching t.v. with the child. I don't know him to be living with my father. I wasn't aware of him living with my father."

- xiii). In reply to the question whether the Defendant was telling the truth when she stated in paragraph 25 of her Witness Statement that no family members had moved onto the land since his father died, and that when she moved to Bendals her three children had moved there with her, the Claimant replied: "No family members [of the Defendant] moved onto the land since the Notice to Quit was served."
- xiv). His Counsel, hearing the proverbial cock crow three times, then repeated the question as to whether or not the Defendant was correct in paragraph 25 of her Witness Statement when she alleged that "I have been accused of allowing my whole family to move onto the land since being served with the Notice to Quit. That too is not true. I moved to Bendals with my three (3) children and my eldest daughter Magda was seven (7) months pregnant when we moved. Seven (7) grandchildren and a great grandchild were born on the land during Mr. Harrigan's lifetime. Another grandchild was born after his death. No family member has moved onto the land since Mr. Harrigan died." The Claimant this time, having being given a second opportunity by his Counsel, answered that "...it is not true because after my father died a daughter named Jamica moved there."

[4] In Cross-Examination the Claimant said as follows:

- a) That he had moved from his father's home to live with his aunt at age 5.
- b) That he would try to visit his father on weekends and holidays.
- c) That it is not true that his aunt prevented him from visiting his father.
- d) That his aunt would not beat him because he tried to visit his father. She would beat him for coming home from school late. "Sometimes I would see my father on the road and I would talk to him."
- e) That it is not true that between the ages of 5 and 15 he did not visit his father. Further, the Claimant insisted that Jamica did not live with his father and her mother, but only moved in when his father had died. When asked how he became aware that Jamica had moved there he answered "By family members, and seeing her there after my father had died." [I

will state now that this is equally consistent with the allegation of the Defendant that the Claimant very seldom, if ever, used to visit his father. He would become *personally* aware that Jamaica “had moved there” only when he actually went there. If he was only *personally* aware that she had moved there *after* his father’s death, it could well be that he was very seldom, if ever, there *before* his father’s death. He could have been made aware by family members that she had moved there *before* his father’s death.]

- f) When asked whether he had become aware of the fact that the Defendant was building chattel houses on the land by *being told* or by *seeing it for himself*, he answered “both.” [I make the same observation as above.]
- g) Rather telling were the Claimants answers to the questions: (i) if he knew that his father had given Jamaica permission to live on the land, and (ii) If he knew that his father had given permission to the crew of the Bookship “Logos II” to build a house on the land for Swain. To these questions his answers were: “*I was not aware of that,*” and “*I don’t know of that.*” In fact, *twice* did he say that he didn’t know about his father giving the “Logos II” crew permission to build Swain’s house. Why would he not know if he visited his father regularly? If he had the close relationship which he says that he did with his father? If either of those assertions were true, the Claimant would have been able to give evidence of his father telling him that he either did, or did not, give permission to both Jamaica and the crew of the bookship “Logos II”.

[5] I observed the Claimant in the Witness Box. I saw his demeanor. He was shifty. He was cagey with his answers. He appeared to know little or nothing about his father or his father’s life. He was acting on what he had heard from other persons none of whom are known to this Court. They did not give Witness Statements, and they did not give evidence at the trial.

[6] I am irresistibly lead to the considered opinion that Mr. Harrigan was a witness who was being stringently economical with the truth. He appeared to this Court, for the most part, to be giving convenient evidence, as opposed to factual evidence.

[7] Violet Martin then gave evidence for the Claimant.

[8] In her Witness Statement (which had been deemed to be evidence-in-chief) she said:

(a) "3. I don't live far from the property in issue. Originally Maria Lewis lived there and then after her son, Selvin Harrigan came from England he moved in with her. Later, he became involved with a woman with whom he had the child, Charlesworth Harrigan, who is also known as Teddy [the Claimant]. I was close to the family. Teddy is my godson."

(b) "4. Selvin later became involved with Gwendolyn King (Gwen) [the Defendant]. I knew Gwen before this time because I lived for a time in Ottos New Town and Gwen usually frequented the neighbours who were strong drinkers and she would drink with them. Selvin was also a strong drinker."

(c) "5. Gwen did not move into the house until after Aunt Baby died [Aunt Baby was Selvin's mother, Maria Lewis]. She might have visited occasionally but she was not living there. I can recall this because after Gwen moved in I have had to break up several fights between herself and Selvin or go over to the house and use my authority to stop them from breaching the peace in the neighbourhood."

(d) "6. Through all the years I have known Selvin Harrigan, I have never heard him say to me or to anyone else that Gwen was to remain in the house for the rest of her life. In fact, he has stated the opposite, especially when they were fighting. Further, given how I know he felt about his son, it would be highly unlikely that he would allow anybody other than Charlesworth Harrigan any control over his mother's property no matter for how short a time."

(e) Violet Martin did not sign her Witness Statement.

(f) Her evidence in the Witness Box was formal evidence to introduce her Witness Statement into evidence.

(g) Then she was cross-examined.

[8] In Cross-Examination Ms. Martin, in answer to Ms. Kema Benjamin's questions, said the following–

(a) Q. "What was the nature of your relationship with Mr. Harrigan?"

A. *"Hi and Bye; no close relationship."*

(b) Q. "He ever came to you and discussed personal matters?"

A. *"He had never discussed anything personal with me."*

[9] It is clear to this Court that Ms. Martin's evidence-in-chief is, at its highest, unreliable. This is so because she did not impress this Court that she was being forthright, even when simply explaining why she was unable to personally sign her Witness Statement.

[10] Her answers in cross-examination confirmed to the Court the degree of unreliability.

[11] In fact, her said answers completely strip her evidence-in-chief of any semblance of believability. I therefore reject her evidence.

[12] The Defendant, Ms. King, gave evidence. Her Witness Statement had been deemed to be evidence-in-chief. She commented on her evidence-in-chief. She was Cross-examined by Ms. Thomas.

[13] This is what she said in chief:

(a) That she was forty years old when she met Selvin Harrigan, and he was fifty-five years old, and their relationship began in or around May, 1992.

(b) That when she met Selvin's mother, Maria Lewis, Ms. Lewis wanted her to "stay with them but [she] could not because she had her own family to take care of and [she] had a job."

- (c) That she first went to live with Selvin and Maria in 1992.
- (d) That she returned to her home in Potters on 31st December, 1992.
- (e) That on 2nd January, 1993 Selvin's cousin removed Maria from their home and took her to Cashew Hill, where three weeks later Maria died.
- (f) That one day in January 1993, Selvin contacted her [Gwendolyn] and told her that Maria wanted to return to Bendals Village and that she wanted Gwendolyn to clean the house for her return.
- (g) That on or around 28th January 1993, Selvin asked her to accompany him to Bendals Village to clean his house as his mother, Maria, was returning that very day. Gwendolyn took her daughter Magda, who was seven months pregnant, her daughter Jamica, and her son Swain who was wheelchair bound, to Bendals Village with Selvin.
- (h) That on the way to Bendals Village Selvin visited Maria at Cashew Hill.
- (i) That they went to Bendals Village and cleaned the house. At about 6 p.m. they had finished cleaning the house and were waiting to go back to Potters Village when a man called Spanky came to the house and informed Selvin that his mother had died.
- (j) That Selvin did not take his mother's death well. He had always drunk alcohol, but his mother's death made him drink more.
- (k) That soon after his mother's death, Selvin became ill and asked Gwendolyn to stay with him until his health improved. Gwendolyn told him that she had her life in Potters so she could not stay, and Selvin asked her to relocate to Bendals Village permanently with her children, as he did not want to be on his own.
- (l) That Selvin told her that she could live on the land for the rest of her life and no one could move either her or her children off the land.
- (m) That she gave up her house in Potters Village and relocated to Bendals Village with her children to live with Mr. Harrigan. That she moved to Selvin's home in reliance on his assurance that she could reside there for the rest of her life.

- (n) That she was “his live-in girlfriend.”
- (o) That she has lived with her children on that land as their home for the past 19 years.
- (p) That she has been accused of building a number of chattel houses on the land since she was served with the Notice to Quit. That is not true, she says. There are three dwelling houses on the land and they were all built during Selvin Harrigan’s lifetime.
- (q) One such house is the main house constructed by Mr. Harrigan and occupied by Mr. Harrigan, Gwendolyn and her children. Another is a house built by Jamica with Selvin’s permission, which permission she obtained in or around August, 2005. The third house is one constructed by the crew of the bookship “Logos II”, with assistance from members of the community and Mr. Bernard Warner, the President of the Antigua and Barbuda Association of Persons with Disabilities, for Swain Burton, Gwendolyn’s son who was born with cerebral palsy.
- (r) One day in 2005 or 2006, Selvin asked Mr. Warner, who was visiting, if Mr. Warner could assist in getting a house suitable for a disabled person built on the land for Swain. Selvin was concerned that Swain needed a house that could accommodate Swain’s disabilities.
- (s) A few months after Mr. Warner returned with the crew of “Logos II”. They spoke to Gwendolyn and Selvin about their plans of building the house for Swain, They asked Selvin if he was consenting to them building the house for Swain on his land. He agreed to it. He allocated portion of land for them to build the house for Swain. The house was built by the crew of “Logos II”, volunteers and some of Mr. Warner’s friends from the Grays Green Community.
- (t) The building of the house for Swain was published in the Media. The “handing over ceremony” was televised on the State-owned television station, ABS Television. The local daily newspaper, “The Observer”, reported on it. This was in 2005/6.
- (u) That the land in question is ghut land where all the water from Buckleys Village passes through. Whenever it rained heavily the land would flood. With Selvin’s concurrence

Gwendolyn planted coconut and banana trees to help with the flooding. The land was overgrown with bush which Gwendolyn cleared. It took her nine weeks to clear the land of the overgrowth.

- (v) That she worked very hard to clear the land, and even lost apart of one of her fingers working the land.
- (w) That for all the years in which she lived with Selvin, none of his family members ever visited him. Gwendolyn, her children and her grandchildren took care of Selvin until the day he died.
- (x) That Gwendolyn, her children and grandchildren had quiet enjoyment of the land until Selvin died.
- (y) That once Selvin died, the Claimant has done everything he could to get Gwendolyn off the land.
- (z) That Selvin had always told Gwendolyn, in the presence of other persons, that she could live on the land forever and no one could move her.

[14] In commenting upon her Witness Statement Gwendolyn said the following –

- a) That it was not true that the Claimant always had a good relationship with his father.
- b) (b) That it is not true that the Claimant visited his father every afternoon after school while the Claimant was a student at Bendals Primary School. She further stated that there was no relationship between Selvin and the Claimant. This I take to mean, in the context of her evidence, and having seen her give her evidence, that Selvin did not have a close relationship with the Claimant.
- c) That it is not true that the Claimant would visit Selvin every weekend and on holidays.

- d) She stated that on one occasion she had seen the Claimant on the eastern side of the school and she called Selvin to show him the Claimant. She then called the Claimant, shouting "Teddy, Teddy". Teddy, who was then six years old, came running over to Selvin and Gwendolyn. Selvin had a conversation with Teddy and gave him \$50.00. Teddy put the money in his school bag and went back to school.
- e) The next day they saw Teddy again. They called him. He appeared to be scared. They kept calling him. He came to the fence. Selvin asked him why he didn't come the first time they called him. "Teddy told us that someone went and told Aunt Vi that he was speaking to us and Aunt Vi beat him. And we haven't seen him until nine years later when he was 15 years old."
- f) Gwendolyn denied that the Claimant stayed overnight at their home. She said that the Claimant "...never slept there for the time I had been there. Never, not for even one night. There was no chair in the living room. The children never slept in a room in the yard."
- g) In response to the Claimant's statement that he used to give his father food, Complian etc., Gwendolyn said "This is not true. Mr. Harrigan [Selvin] would take care of the bills and I took care of the domestic part. The food, and everything else."

[15] Gwendolyn was then cross-examined by Ms. Thomas, the relevant parts of which are as follows-

- (a) Q. "Your relationship with Selvin started the same day you met him?"
A. "Yes, May 4th 1992."
- (b) Q. "After Selvin died, did you not thereafter tell the members of his family not to come there on the land?"
A. "No. For the 20 years I living there I never see none of them people come there except for the night his mother died when they came and take up everything."
- (c) Q. "Put to you that the house built by "Logos II" was built after Selvin died."
A. "No. It was built before he died."

- [16] Having carefully observed the Defendant while she gave her evidence, I found her to be an honest and very credible witness. Her demeanor on the witness stand was such that I got the distinct impression that she was being frank and honest. She appeared to be a sober person of considerable intellect, despite the allegations by the Claimant that she is an alcoholic. Her drinking habits are none of the business of this Court. I do say, however, that, whatever they may be, she impressed me as an honest, forthright and intelligent witness. I accept her evidence as being truthful, particularly because it appeared to be imperfect, in that it contained slight immaterial errors. It appeared to be that of a person telling the truth as it is. I was impressed by her forthrightness.
- [17] Bernard Warner gave evidence. He was cross-examined by Ms. Thomas. He remained consistent in his testimony. His evidence with respect to the construction of the house for Swain, corroborated the evidence of the Defendant in every material particular. He said that the house for Swain was built in 2006. I accept that as a fact. Selvin died in 2007. Mr. Warner impressed me as being an honest and forthright witness. I accept his evidence as being truthful.
- [18] Jamica Burton gave evidence. She was cross-examined by Ms. Thomas. She confirmed that, after Maria had died when Selvin was speaking to Gwendolyn about coming to live with him, she had heard Selvin tell the Defendant that she, Gwendolyn, could live on the land for the rest of her life. She admitted that Selvin was very drunk when he said that. [I heard no evidence that Selvin was drunk everyday of all those years during which Gwendolyn and her children lived with him. The inference is clear.]
- [19] She stated that she did not know the Claimant well. That he used to visit on Sundays, but not every Sunday. That she lived on the property from the time that she moved there with her mother, brother and sister after Maria's death. That she never "moved" away.
- [20] It was put to her that she had moved from Selvin's home several years before his death. She denied this. She admitted that sometimes she would sleep at her boyfriend's house at All Saints, but insisted that she never moved away from the land at Bendals Village. [Sleeping at her

boyfriend's house from time to time is not inconsistent with her living continuously at Bendals Village with Selvin and the family. I so find.]

[21] She was asked if in 2009 she went to Bendals to register? [as a voter]. She said no, she had registered in 2003/4 in Bendals when the Voter I.D. Cards were introduced.

[22] She said that Selvin gave her permission to build her home on the land. In fact, she said, she had asked to build it by the mango tree on the land and Selvin had said no, because it would be too close to the road. He told her to build it down by where the pig pen was, and that is where she built her home.

[23] I observed Jamica in the Witness Box. I observed her demeanor. I was impressed by the frankness of her responses to questions. She did not hesitate to admit that, after Maria had died Selvin was "very drunk" when he told her mother that she could live on the land for the rest of her life. She appeared to me to be a witness of truth. I accept her evidence as being the truth. She corroborates both Gwendolyn's and Mr. Warner's evidence in the material particulars.

[24] Where there are conflicts between the evidence of the Claimant and Ms. Martin, on the one hand, and the Defendant, Mr. Warner and Jamica on the other hand, I accept the evidence of the Defendant, Mr. Warner and Jamica as being the truth. I, having keenly observed both the Claimant and Ms. Martin when they were giving evidence, do not accept either of them to have been truthful witnesses. Where ever their evidence conflicts with that of the Defendant, Mr. Warner or Jamica, I reject their evidence and accept that of the Defendant, Mr. Warner and Jamica as being the truth.

[25] Based upon the evidence which I have accepted, and inferring from those facts other facts which are inexorable and axiomatic, I find the following to be Facts in this case:-

(a) That Gwendolyn and Selvin had a relationship since May, 1992.

(b) That Selvin asked her to come to live with him and to bring her family along her children, Magda, Swain and Jamica.

- (c) That in 1993, shortly after Selvin's mother, Maria, died, Selvin asked them to come to live with him permanently, and they did.
- (d) That Selvin and Gwendolyn had a common law relationship akin to that of husband and wife. That she took care of all the domestic needs of the household. That her daughters helped her and Selvin like children would help parents.
- (e) That Selvin treated Gwendolyn's children as if they were his own.
- (f) That Selvin did in fact tell Gwendolyn that she, along with her children, could live on the land for her entire life, and that no one could move them from there.
- (g) That Selvin did initiate the idea of building of the house for Swain, and did in fact give permission for it to be built.
- (h) That Selvin did in fact give Jamica permission to build her house on the land, and did tell her exactly where to place it.
- (i) That Gwendolyn and her children took care of, and planted trees on the land to diminish the flooding, thereby improving the land.
- (j) That the Claimant was, at best, an infrequent visitor to his father's home who never slept over.
- (k) That the Claimant never had a close relationship with his father. That his father never told him that parcel 14, the land, was to be his, the Claimant's, after his father died.
- (l) That, based upon the above facts, it is easily and reasonably inferred that Selvin intended Gwendolyn and her children to make their homes on the land, to live there with their children and not to be disturbed at any time by anyone. I find that to be a fact.
- (m) That the Defendant and her three children, her seven grandchildren and her great-grand child have been living in peaceful and undisturbed possession – save for those born on the

land after the Defendant and her children moved there, and, in the case of those born on the land, from the times of their births – since 1993, until after the death of Selvin when the Claimant, in his quest to get them off the land, began to disturb them. I find as a matter of fact, on the evidence which I have accepted, that Selvin, Gwendolyn, Jamica and Swain were in continuous joint possession and occupation of parcel 14 from 1993 up to the day of Selvin's death, and continue to be so.

(n) I find as a fact, inferred from the accepted facts of his words and conduct, that Selvin intended that the Defendant, Swain and Jamica have an interest in the land. It was there home from 1993, and he wanted it to continue to be their home after he died. He did not have the benefit of a Lawyer. Neither did the Defendant. They dealt with the land, and with their family relationship, as too often happens in relationships of their kind. In Good Faith, and perhaps in ignorance of what the legal requirements are so as to manifest Selvin's inferred intention. He died intestate. Perhaps not knowing what was legally required to concretize his intentions as I have found them to be.

(o) All is not lost, however. There is Equity.

[26] Based upon my findings the Claimant's Claim is dismissed.

[27] The Defendant Counter-claimed for Damages for breach of Contractual License. I find as a fact and as a matter of Law that there was no such Contractual License. There was initially a bare licence [the Claimant accepted the existence of such in his Statement of Claim] which, for reasons which follow, was, in equity, transformed.

[28] The Claimant submits that the Defendant did not claim Declaratory relief and ought not to be afforded any such relief. She must stand or fall on her prayer for Damages for breach of contractual license, says he!

[29] However, the Claimant also counter-claimed "Such further relief as this honourable Court deems fit."

What is the effect of my findings of fact?

- [30] Section 20 of the Eastern Caribbean Supreme Court Act, CAP 143 of the Laws of Antigua and Barbuda, reads as follows:-

"20. The High Court and the Court of Appeal respectively in the exercise of the jurisdiction vested in them shall in every cause or matter pending before the Court grant either absolutely or on such terms and conditions as the court think just, all such remedies whatsoever as any of the parties thereto may appear to be entitled in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings concerning any of these matters avoided."

- [31] The conjunctive effect of the Defendant's claim as set out in paragraph [29], and Section 20 above, acting in harmonious concert with the overriding principle of CPR 2000, gives this Court the jurisdiction to provide relief and a remedy to the Defendant/Counter Claimant.

- [32] Even without any of those three items, I would have been prepared to issue the requisite Declarations and Orders so as to ensure that Justice was done in this case.

- [33] I have found that the Defendant was in possession and occupation of the land, jointly with her children and with Selvin during the period 2003 to 2007 when he died, and continually thereafter and, having found that Selvin gave permission for Swain's house and Jamaica's house to be built on the land; and

- [34] That, Initially, the defendant and her children had a revocable Licence. Not a contractual licence. They initially came onto the land on the understanding that they would be there at least for the life of Gwendolyn. The relationship between Selvin and Gwendolyn and her children have all the hallmarks of a family relationship. A stepfather dealing with his stepchildren and with his common law wife as any father would with his natural children and wedded wife. I hold that all this was transformative of that revocable licence.

[35] They uprooted themselves and left Potters Village to go to Bendals Village at the request of Selvin to live with him. They have lived there ever since 1993. Grandchildren and a great-grand child were born there. They worked the land by cleaning and planting like any family unit would do. Gwendolyn took care of the domestic needs of the household. Like any wife would do. Selvin initiated the process that caused Swain's house to be built. He gave Jamica permission to build her house, even telling her where to locate it so that it not be too close to the road.

[36] All of this clearly shows that Selvin not only treated Gwendolyn as he would his lawfully wedded wife, but the children and grandchildren as if they were of his blood.

[37] In the case of **Yeoman's Row Management Limited and Another v Cobbe**¹, Lord Scott of Foscote says this:-

“...I want first to consider as a matter of principle the nature of a proprietary estoppel. As “estoppel” bars the object of it from asserting some fact or facts, or, sometimes, something that is a mixture of fact and law, that stands in the way of some right claimed by the person entitled to the benefit of the estoppel. The estoppel becomes a “proprietary” estoppel – a sub-species of a “promissory” estoppel – if the right claimed is a proprietary right, usually a right to or over land.... So, what is the fact or facts or the matter of mixed facts and law, that in the present case, the appellant is said to be barred from asserting? What is the proprietary right claimed by Mr. Cobbe that the facts and matters the appellant is barred from asserting might otherwise defeat? ...And what proprietary claim was Mr. Cobbe making that an estoppel was necessary to protect?”

[38] At paragraph 16 Lord Scott continues: *“My Lords, unconscionability of conduct may well lead to a remedy but, in my opinion, proprietary estoppel cannot be the route to it unless the ingredients for a proprietary estoppel are present. These ingredients should include, in principle, a proprietary claim made by a claimant and an answer to that claim based on some fact, or some point of mixed fact and law, that the person against whom the claim is made can be estopped from asserting.”*

[39] *“What is the fact or facts, or the matter of mixed fact and law, that in the present case, the [Claimant] is said to be barred from asserting.”* The legal rights attached to the Estate of Selvin Harrigan, deceased, being, or being entitled to be the Registered Proprietor of Parcel 14. *“What is the proprietary right claimed by [Gwendolyn King] that the fact and matters the [Claimant] is barred*

¹ [2008] UKPC 55, at paragraphs 14-15

from asserting might otherwise defeat?” That of being a Licensee coupled with an expectation, on the facts found in this case, to have been encouraged by Selvin Harrigan that she, together with her children, could live on Parcel 14 for the rest of her life, at the very least.

[40] Lord Scott pointed out that in **Taylor Fashions Ltd. v Liverpool Victoria Trustee Co. Ltd**². “Oliver J, as he then was, stated the requirements of promissory estoppel in a “common expectation” class of case in a well-known and oft cited passage...”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.” I find that in this case there was such an expectation and that Gwendolyn and her children acted to their detriment on the basis of this expectation.

[41] In **Yeoman’s Row**, Lord Scott addressed the case of **Plimmer v Mayor of Wellington**³, a case on proprietary estoppel, thus: “...the question was whether the appellant, Mr. Plimmer, had a sufficient “estate or interest” in the land to qualify for statutory compensation when the land became vested in the Wellington Corporation. Plimmer had occupied the land under a revocable licence from the Corporation’s predecessor-in-title and at the request of that predecessor-in-title had made extensive improvements in the land. The Judicial Committee held that these circumstances “were sufficient to create in his [Plimmer’s] mind a reasonable expectation that his occupation would not be disturbed...” In effect the owner of the land became estopped from asserting that the licence remained revocable. That was sufficient to constitute the licence an “estate or interest” for compensation purposes...” I apply this principle to the facts as I found them in the case at bar.

[42] Lord Scott referred to the case of **Inwards v Baker** [1965] 2 QB 29 in his Judgment in **Yeoman’s Row** at paragraph 22 thus:-

“...was a case in which an indulgent father had encouraged his son to build a bungalow on his, the father’s, land. The son had done so in the expectation, encouraged by his father, that he, the son, would be permitted to remain in occupation. The Court of Appeal held that the son had an equity

² [1982] QB 133 at 134

³ (1884) 9 App. Cas. 699

entitling him to live in the bungalow as long as he wished. In effect the father, and after his death the trustees of his will, were estopped from denying the son's licence to occupy the land was an irrevocable one. The case was on all fours with *Plimmers* case, which was relied on by both Lord Denning M.R. (36/37) and by Danckwerts LJ (38) in their respective judgments. The principle that, if A, an owner of land, encourages B to build on his, A's, land on the footing that B will be entitled thereafter to occupy the new buildings, is undoubted good law..."

I Hold that in the facts of this case the principle of law enunciated in **Inwards v Baker** (supra) applies to the licence granted to Gwendolyn, Swain and Jamica.

[43] I apply the principles of Law set out in the aforesaid cases.

[44] I Hold as a matter of Law that the Defendant, her son Swain Burton and her daughter Jamaica Burton hold irrevocable licences over Parcel 14. They do so jointly. This irrevocable licence constitutes an interest in Parcel 14, is perpetual, and is capable of being noted on the Register for Parcel 14. I so DECLARE.

[45] The Registrar of Lands is directed to make the necessary notation on the Register for Parcel 14. I so Order.

[46] Each party is to bear their own Costs in this matter.

Thomas W.R. Astaphan
High Court Judge [Ag.]