IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 00364 OF 2007

BETWEEN	**ETLA ANDERSON**	**CLAIMANT**
AND	**GERALDINE REYNOLDS**	**1ST DEFENDANT**
AND	**ALVIN REYNOLDS**	**2ND DEFENDANT**
AND	**BRIDGETTE REYNOLDS**	**3RD DEFENDANT**

(In their personal capacities and as representatives of the Estate of GLENMORE REYNOLDS and Vincent Reynolds, both deceased)

Judith M. Clarke instructed by Judith M. Clarke & Company for the Claimant and Ms. Vivienne Washington for the Defendant.

Heard April 8 and 9, 2010; October 25, 26, 27 and 28, 2010 and November 10, 2010.

Claim for equitable interest in real property based on contribution; whether contribution proven; evidence in support; constructive trust; proprietary estoppel; whether contribution raised an equity in contributor; quantification of interest by court.

ANDERSON J.

1.) The dramatis personae in this action were both Jamaican residents of the United Kingdom, having no doubt been part of the massive migration from Jamaica to England in the decade and a half following the end of the Second World War. Mrs. Etla Anderson the Claimant, now aged 74 years, was a divorcee who had resided in London, England for many years. The nominal Defendants in the case are the wife (Bridgette) a child and a brother of Mr. Glenmore Reynolds who died in Jamaica in 2005 at the age of 73 years, having retired to the country of his birth sometime around 1999. (No disrespect is intended when I refer to them as "Etla" and "Glenmore" respectively.) The Defendants represent herein the estates of the deceased Glenmore and his late father Vincent. It is not clear to me why it is necessary to

involve Vincent as there is no averment that he had any continuing interest in the property at issue.

2). Glenmore and Etla met sometime in the 1980's and seemed to have struck up a relationship which became intimate somewhere between 1988 and 1991. At that time Etla was a divorcee while Glenmore was then and up to the time of his death, married to Bridgette Reynolds. Both parties, then clearly in the autumn of their lives, were probably searching, in the circumstances, to find their second Spring.

3). The Litigation is over real property in an area known as Reynolds Land, Round Hill in the Parish of St. Elizabeth. This is an area of the country which not only has proved to be one where many Jamaicans returning from overseas have chosen to live, but it was also that from which Mr. Reynolds originated and where his family resided. He had himself migrated to England in around 1952. The land in question which is unregistered land, now has a house constructed upon it. That house is being claimed by Etla on the basis that she was the person who constructed it. Mrs. Anderson claims that she has, at least a proprietary interest therein, while the representatives of the estate of Mr. Reynolds deny that she has any such interest. There is regrettably no full description nor even a street address of the exact property which is the subject of the litigation but the parties seem to be in no doubt as to what property is at stake.

4). In her Claim Form the Claimant asserts that she has an equitable interest in the property from which she claims the

Defendants have forcibly evicted her. She also claims a declaration as to the precise share and extent of her interest in the property and she seeks an order that the Defendants do pay to her "the market value of the house which she has constructed on the said land". She seeks further orders that the Defendants compensate her for all the sums she has expended on the property as well as the value of the items which she claims the Defendants or their agents have removed from the property. She also seeks an order restraining the Defendants from disposing of the house which she claims to have constructed except in order to satisfy her interest. Further she claims a share of any rental generated by the said property and interest on all sums awarded to her at the commercial rate.

5). **EVIDENCE**

As the evidence unfolded, it emerged that neither side presented any significant facts to support the claims made in the particulars of claim or in the defence and counter claim filed by the Defendants. The Claimant's evidence was to the effect that she had contributed Eight Thousand pounds (£8,000.00) toward the construction of the house. She said she had borrowed this sum from her son who was the one who controlled her finances. She produced a copy of a bank statement which suggested that a sum in the above amount was deposited and then withdrawn as evidence of her contribution.

6). She said she had also used her own money to buy materials used in construction and she produced a number of receipts purporting to represent purchases she made for the

construction. She alleges that her involvement was based upon the common intention of herself and Glenmore to provide a house for them to live in together. She says she had also purchased furniture for the house.

7). Etla also produced and tendered into evidence a building contract between herself and Everton Witter which purported to be a contract for the completion of the house. It is common ground that the contract with Witter did not produce a completed building and Witter was eventually dismissed as the contractor.

8). Desmond Ebanks, a witness for Etla stated that he did work on the building for about three (3) weeks after the arrangement with Witter had broken down, for which Etla paid him $2,000.00 per day. I must say that I was not impressed with the credibility of this witness and in any event, he did not assist on the central issues as to whether there was a common intention or the extent of her contribution.

9). By 1999 Mr. Reynolds had decided to return to Jamaica. According to the Claimant Mr. Reynolds told her he had this piece of land which was given to him by his father and he encouraged her to construct a house on the portion of land. She said that between 2000 and 2002 she constructed the house and she also paid for the installation of electricity poles for the supply of electricity. She said that she and Glenmore moved into the house in about 2002 and lived there together until the death of Mr. Reynolds in 2005.

10). Subsequent to his death, the Defendants gave the Claimant notice to vacate the property and while she was away changed the locks. It is not denied that the locks were changed.

11). According to counsel for the Claimant in response to an observation by Counsel for the Defendants in her submissions, the Claimant did not think it necessary to call evidence which might have been available or helpful. Such evidence would have come from her son or other people in England and counsel said it was "impractical" for them to travel to Jamaica. Her evidence therefore must stand on its own to prove her case on a balance of probabilities.

12). The evidence as given for the Defendants was provided by Geraldine Reynolds, the daughter of the deceased who came from England for the trial, as well as a Victor Reynolds a brother of the deceased, who had some knowledge of the relationship between the parties.

13). The Defendants deny that there was any common intention between Glenmore and put the Claimant to proof. They aver that Glenmore had money of his own in the sum of about Twenty Thousand Pounds (£20,000.00) which represented the net profits from the sale of his family home in London and the subsequent purchase from the proceeds of a smaller place for his wife, Bridgette, who was remaining in England. His daughter says she was aware that he took money with him when he left for Jamaica. The evidence of Glenmore's banking and financial affairs as contained in bank statements tendered into evidence

by Etla suggested the two pensions which he received totaling over eleven hundred pounds (£1,100.00) per month which when converted to Jamaican dollars is an appreciable sum.

14). Victor Reynolds, Glenmore's younger brother testified that while he was aware of the relationship between Glenmore and Etla, he was not aware of Etla making any significant contribution to the building of the house. He confirmed that both Etla and Glenmore had been involved in building the house and that before they moved into the house they had spent some time together at his house. Both sides suggest that the court should draw inferences either from the perceived behavior or the conduct of the other side.

15). The court accepts as a fact that Glenmore Reynolds was the owner of the land on which the house was constructed. The land was either given to him by his father or he had purchased it, but there is no credible evidence to contradict the fact that he was the beneficial owner of the land before Etla had come from England to Jamaica sometime around 2000.

16). When the parties had struck up an intimate relationship in England, Mrs. Anderson arranged for her solicitors to prepare an agreement which set out the respective rights of the parties. On Etla's testimony, by that time Mr. Reynolds had taken up residence in Mrs. Anderson's home in England. That agreement was admitted into evidence as Exhibit 1. Etla also testified that the reason she did not have a similar agreement drawn up when they came to Jamaica and were building the house, was because

she thought that the agreement in England still was effective for the Jamaican situation.

17). The Claimant does not allege that there was any agreement between herself and Glenmore which showed that there was a common intention to construct the house and to own the property. Certainly there is no evidence to support such an agreement having been made. Rather it was the submission of her counsel that the court should infer that common intention from the conduct of the parties. There is evidence that when Etla came from England sometime after 2000, she and Glenmore lived at his father's (Vincent) house for a while. The older man however disapproved of his son cohabiting with his lady friend in his house and they went to live with Glenmore's brother before moving into the house which was being constructed.

18). Etla points to the money (£8,000.00) she claimed to contribute to the building and that she averred she gave to the deceased. Secondly, she submitted that the detrimental reliance by the Claimant on the "implied promise" by the deceased that the house was being built for their joint occupation, as giving rise to an interest in the property.

19). It was submitted that the Claimant had acquired an equity in the property based not on the doctrine of constructive trust but on the principle of proprietary estoppel.

20). There is very little hard evidence presented to the court which supported the claim by the Claimant. The witness who came to

give support was unable to assist on the question of whether there was any common intention between the parties. Regrettably, the Claimant herself provided little or no evidence as to the extent of any contribution she made to the cost of building the house in question. Most of the receipts she tendered as hearsay evidence were in the joint names of Anderson/Reynolds. There is no quantification by the Claimant as to the extent of her contribution except to the £8,000.00 and the receipts. However, there is no evidence as to which receipts are in fact representative of sums expended by Etla. On the other hand, what little hard evidence was produced for the court was gleaned from the bank statements of the deceased which statements had been sent to the Claimant's address in London and were ironically put into evidence by the Claimant. These tended to show that the deceased had considerably more available resources at his disposal than the Claimant who had a pension income of just about £400.00 per month.

21). It is trite law that the burden of proof rests on the Claimant. He who alleges must prove. If the Claimant is to succeed she must show on a balance of probabilities that there was either a constructive trust or that proprietary estoppel had arisen.

22). Counsel for the Defendants in her submissions has pointed out that there are several inconsistencies in the evidence of the Claimant. For example, she says that there is inconsistency about when they met. Her witness statement said 1991 while in viva voce evidence she said it was in the 1980s. Her recollection as to when the agreement between the parties in England was

signed, was also not clear as she said in cross examination that this was done one (1) week after he had moved in to her home at 31 Gaylor Road, Northolt Park, Middlesex. Indeed, it is also not clear as to the period over which the Claimant and the deceased cohabited. While she speaks of being together for from the time he moved into her home and up to his death, her evidence is that she has continued up to the present to live in London. At the same time, she also said that she returned to Jamaica "permanently" in 2002.

23). While she also spoke of having "substantial savings" she was unable to substantiate this by way of records as it appears that her bank accounts were usually in debit. In addition, she said that the £8,000.00 which she had paid to Witter was "borrowed" from her son Derek.

24). The Claimant also was not able to give evidence in any definitive terms, of how much she contributed and although she said it was "substantial", she does not know this figure. There is also no evidence as to the final cost of the property. There is one valuation report which was tendered into evidence, but that report does not assist in the determination of the issues this court must decide.

25). Etla has no record of how much she paid Everton Witter or Desmond Ebanks and although she said she paid Witter by cheques, (some £500.00 per month for five months) no cancelled cheques were produced. She speaks of selling her motor car in England for £4,000.00 but does not know how

much of that sum was put into the house. The Defendants' counsel also reminded the court of the letter from the Claimant to the deceased in which she stated that he did not want her to make any contribution to the building and also refused to allow her to see his bank books.

26). Defendants' counsel submitted that there was no basis to sustain the claim being made by the claimant as there was no "common intention" on the part of the deceased so as to give rise to a constructive trust. In any case, the evidence of the Claimant was not credible and the court should find that the claimant had failed to prove on a balance of probabilities that she had acquired any interest in the property.

27). Counsel for the Claimant in her submissions urged the court to the view that the claimant should be believed when she says that she had contributed to the construction on the invitation of the deceased. She also asked the court to infer from the conduct of the parties a common intention between them that they were building the house together, with their joint resources, to be used as their joint residence.

28). It was her submission that the inconsistencies pointed out by the Defendants' counsel were not significant. She pointed out that although Etla had not provided definitive evidence of considerable resources, it should be remembered that she spoke of getting "partner draw" while in England, although she did not say whether it was more than once. She also asserted that the effect of the letter of September 20, 1999 from Etla to

Glenmore, in which she acknowledged that he did not want her help in building the house, should be tempered by the fact of the building contract signed between Etla and Witter on February 14, 2000.

29). With respect to that contract, it should be noted that by its terms it acknowledged that the sum of thirteen thousand eight hundred pounds (£13,800.00) had been paid in October 1999 which is in the month following the letter referred to above in which Etla acknowledged that Glenmore did not want her help to build the house but the she would "furnish it for us". The agreement also acknowledges the receipt of eight thousand pounds (£8,000.00) on the day of signing and notes that the sum of five hundred pounds (£500.00) was to be paid monthly towards liquidating the balance due on the construction in the sum of eighteen thousand two hundred pounds (£18,200.00)

30). Ms. Clarke for the Claimant submitted that a constructive trust had arisen in favor of Etla and accordingly, Glenmore held her interest on trust. In her submission a common intention was to be inferred from the conduct of the parties though there is no particular conduct which is unequivocally referable to such an intention. The contribution made by Etla in money to the building represented a detriment which she had suffered. She cited **Pearce and Stevens** "*The Law of Trusts and Equitable Obligations*" Fourth Edition, where it quoted Peter Gibson L.J. in the case of **Drake v Whipp** 1996 1FLR 826 at page 830 as saying:

> "All that is required for the creation of a constructive trust is that there should be a common

> intention that the party who is not the legal owner should have a beneficial interest and that that party should act to his or her detriment in reliance thereon".

It is clearly not necessary for that common intention to be expressed. It can be inferred from the conduct of the parties.

31). In any event Ms. Clarke said she was not relying solely on the principle of the constructive trust but rather on the principle of proprietary estoppel. That principle is founded in equity and in the concept of unconscionability. She again cited Pearce and Stevens referred to above and in particular page 327 of that text. There the text states:

> "The doctrine of proprietary estoppel provides another means by which a person may become entitled to a proprietary right despite the absence of expressed intention and appropriate formalities. As Stephen Moriarty has observed:
> 'The role of proprietary estoppel seems self evidence "it provides for the informal creation of interests' in land whenever a person has acted detrimentally in reliance upon an assurance that he has such an interest. Oral grants of interests by themselves, therefore are insufficient; but act in reliance upon some such assurance and proprietary estoppel will validate what the Law of Property Act says has no effect'".

32). It was submitted that "there are two essential stages to the process of claiming a remedy by way of proprietary estoppel namely, establishing an estoppel equity and satisfying that equity through an appropriate remedy". In order to establish the existence of proprietary estoppel it is necessary to show:

a. an assurance

b. a reliance; and

c. a change of position or detriment.

33). In **Greasly and Others v Cooke** [1980] 3 All ER, cited by Etla's counsel, the conduct and assurances given by the sons of the original owner that the defendant who had cohabited with one of the sons, Kenneth, could remain in a house for as long as she wished, created an estoppel. It was held that having established that there had been assurances given, the burden of proving that there had not been detrimental reliance shifted to the plaintiffs who were seeking to recover possession.

34). Ms. Clarke also cited the cases of **Pascoe v Turner** [1979] 1WLR page 431 and **Lloyds Bank PLC v Rosset** [1991] AC page 107. In the former the owner of a house assured the defendant, his former cohabitee, that the house and contents they shared belonged to her and that his solicitor was arranging the transfer. She spent money on redecorations, improvements and repairs. The Plaintiff knew that she was doing this in the belief that the house and contents were hers. It was held that in the circumstances where the Plaintiff had encouraged or acquiesced in the defendant incurring expenses in improving the property in the belief that the property belonged to her, though no trust was created, this had given rise to an equity. This could be satisfied by ordering the plaintiff to execute a transfer to the defendant.

35). **Cooke v Head** [1972] 1 WLR 518 was also cited by Etla's counsel as support for the proposition that Etla had acquired an

equity. There, the parties had planned to build a bungalow for their residence on piece of land bought by and in the name of the defendant. The parties saved and pooled their resources and used it to pay mortgage and buy furniture. Although the plaintiff did not contribute in cash to the purchase of the land, they both were very active in the physical construction of the house. When the building was almost complete, the parties separated and the plaintiff brought an action for a declaration of her interest therein.

36). The court at first instance held that she was entitled only to a one-twelfth interest. On appeal, it was held that where two people by their joint efforts acquired property for their joint benefit, the legal owner held the property on a constructive trust for both of them; that the beneficial interest was not to be determined according to the parties' separate contributions but the value of the equity was to be determined as at the time the parties separated and then divided between them as the circumstances merited.

37). It was counsel's submission that there was evidence to suggest that Glenmore had given Etla certain assurances or had acquiesced in; that she had relied upon those assurances in contributing to the construction, and this provided the detriment.

38). She further submitted that having found that an equity had been created in light of the above Etla was entitled to a remedy. In the instant case she suggested that the appropriate remedy would be to award her an equal share in the property on the

basis of the equitable maxim that equality is equity. She further submitted that, given Etla's obvious "sentimental attachment" to the property she should be given the first option to purchase it based on valuation. There should also be an accounting for any rent which has been generated from rental of the property.

39). The Defendants' counsel in her response to the authorities, said **Greasly and Others v Cooke** could be distinguished as it was a case where there was a finding that clear assurances had been given. She also submitted that the citation from **Lloyds Bank** was in fact more helpful to the Defendants' case while the citation from *Pearce and Stevens* at page 327 did not really assist the Claimant. She also suggested that **Cooke v Head** was also not relevant as the premises of the holding (purchase on the clear understanding it was for their joint use, joint pooled resources) had given rise to a constructive trust and those features are not present in this case. Further, **Pascoe v Turner** was decided the way it was because of the assurances which the court had found had been clearly given. This distinguished that case from the instant case.

40). Given the nature of the claim, the court must look carefully and critically at the witnesses and the evidence. In order to succeed in her claim, Etla must show either that a constructive trust has arisen in her favour or that she is entitled to succeed on the basis of proprietary estoppel. Insofar as the evidence is concerned, I find that the evidence of the Claimant is in many respects less than reliable to support the conclusions at which she asks the court to arrive. Indeed, I am of the view that the

inconsistencies in her evidence would lead to the conclusion that where there is any admissible evidence which conflicts with hers, it would be safer to accept the other evidence.

41). I regret that I find that the Claimant has failed to satisfy me on a balance of probabilities that there was any common intention. There is certainly no express agreement to which the Claimant can point the court. I also do not consider the Claimant to have established to the relevant standard that there is any specific conduct by the deceased from which to draw the inference that any such common intention was evinced.

42). In **Lloyds Bank v Rosset** (cited above) Lord Bridge at pages 132-133 of the report stated:

> The first and fundamental question which must always be resolved is whether, independently of any inference to be drawn from the conduct of the parties in the course of sharing the house as their home and managing their joint affairs, there has at any time prior to acquisition, or exceptionally at some later date, been any agreement, arrangement or understanding reached between them that the property is to be shared beneficially. *The finding of an agreement or arrangement to share in this sense can only, I think, be based on evidence of express discussions between the partners, however imperfectly remembered and however imprecise their terms may have been.* Once a finding to this effect is made it will only be necessary for the partner asserting a claim to be beneficial interest against the partner entitled to the legal estate to show that he or she has acted to his or her detriment or significantly altered his or her position in reliance on the agreement in order to give rise to a constructive trust or a proprietary estoppel.

> *In sharp contrast with this situation is the very different one where there is no evidence to support a finding of an agreement or arrangement to share, however reasonable it might have been for the parties to reach such an arrangement if they had applied their minds to the question, and where the court must rely entirely on the conduct of the parties both as the basis from which to infer a common intention to share the property beneficially and as the conduct relied on to give rise to a constructive trust. In this situation direct contributions to the purchase price by the partner who is not the legal owner, whether initially or by payment of mortgage installments, will readily justify the inference necessary to the creation of a constructive trust. But, as I read the authorities, it is at least extremely doubtful whether anything less will do.* (Emphases mine)

43). Although this passage was cited by Etla's counsel, I agree with Ms. Washington that it does not assist the Claimant. While the evidence of common intention may vary from case to case, it must show that the question of whether the parties were intending to share *was discussed* although it is not necessary to show that a decision was arrived at. Such decision may then be inferred from the parties' subsequent conduct. I would hold that the September 1999 letter from Etla to Glenmore is strong evidence against holding that there was any such discussion and therefore anything from which to infer common intention.

44). The authorities would seem to suggest that the detriment required in the case of a constructive trust is analogous to that required to sustain a remedy under the principles of proprietary estoppel. (For full discussion of proprietary estoppel, see my judgment in **Jaltique v Laura Walker** (As Administrator of the Estate Raphael Walker) C.L. J - 016 of 2000, February 2008).

45). In the course of checking some of the authorities cited by counsel, I have come across a case **Yaxley v Gotts** [1999] EWCA Civ 3006, judgment delivered June 24, 1999, a decision of the England and Wales Court of Appeal. While that case was largely concerned with English Law of Property (Miscellaneous Provisions) Act of 1989, it contained an extensive discussion and analysis of the related concepts of constructive trusts and proprietary estoppel which I have found to be instructive.

46). Beldam L.J. during the course of his judgment said that the judge at first instance had had commended to him several authorities on proprietary estoppel and in particular the judgment of Lord Scarman, (then Scarman L.J.), in **Crabb v Arun District Council** [1976] Ch 179 at page 192 where he said:

> "In such a case I think it is now well settled law that the court, having analysed and assessed the conduct and relationship of the parties, has to answer three questions. First, is there an equity established? Secondly, what is the extent of the equity, if one is established? And, thirdly, what is the relief appropriate to satisfy the equity?"

Beldam L.J also said:

> ".....it was well recognised that circumstances in which equity is prepared to draw the inference that a party is entitled to a beneficial interest in land held by another may frequently also give rise to a proprietary estoppel".

47). He then cited with approval, the dicta from Lord Bridge of Harwich set out above. The learned judge then continued:

In **Grant v Edwards** [1986] Ch 638 the plaintiff claimed an interest in a house owned by the defendant jointly with his brother. The brother had no interest in the property and the defendant told the plaintiff that her name was not included on the title because it might prejudice matrimonial proceedings pending against her husband. It was their joint intention that she should have an interest in the property and she contributed substantially to the general household expenses. The court held that the plaintiff was entitled to a half share in the property on the ground that equity would infer that the house was held on trust for them both. Sir Nicholas Browne Wilkinson, Vice-Chancellor, said at page 656:

"I suggest that in other cases of this kind, useful guidance may in future be obtained from the principles underlying the law of proprietary estoppel which in my judgment are closely akin to those laid down in **Gissing v Gissing** [1971] AC 886. In both, the claimant must to the knowledge of the legal owner have acted in the belief that the claimant has or will obtain an interest in the property. In both, the claimant must have acted to his or her detriment in reliance on such belief. In both, equity acts on the conscience of the legal owner to prevent him from acting in an unconscionable manner by defeating the common intention. The two principles have been developed separately without cross-fertilisation between them: but they rest on the same foundation and have on all other matters reached the same conclusions."

Beldam L.J. continued:

"There are circumstances in which it is not possible to infer any agreement, arrangement or understanding that the property is to be shared beneficially but in which nevertheless equity has been prepared to hold that the conduct of an owner in allowing a claimant to expend money or act otherwise to his detriment will be precluded from

denying that the claimant has a proprietary interest in the property.(Emphasis Mine)

48). Although, as I have said before, this case was being considered in the context of an English statute and whether certain remedies were now excluded by the particular provision of the Act, I accept the proposition stated immediately above. Notwithstanding my strictures on the quality of the evidence led by both sides, I accept the fact that, on a balance of probabilities, Etla did provide at least the £8,000.00 mentioned in the agreement with Everton Witter. This proposition seems to have been accepted even by the Defendants' counsel who expressed a willingness to refund her that sum as her contribution. But, I also accept that she made some monthly payments of £500.00, although it is difficult to say how many. Given my acceptance of that proposition, I am prepared to hold and do so hold, that Etla has established an equity and the court must now decide how that equity is to be satisfied.

49). As indicated above, there is little in the way of direct evidence from the parties on the value of the property although there is a valuation of some vintage prepared some years ago. According to Mr. Victor Reynolds there has been some deterioration in the conditions of the property as it has not been maintained since the Claimant removed from the house. Etla's counsel had submitted that based on the maxim "Equality is Equity" if it were found that she had an interest, she should be given a fifty per cent (50%) interest. However, even the authorities to which reference is made, do not mandate this approach.

50). In one the statement is made that:

> "Where two or more persons are entitled to an interest in the same property, then the principle of equity is equal division, *if there is no good reason for any other basis of division"*.

In the other authority provided it is stated:

> "Where persons enjoy *concurrent entitlement to identical interests in property,* and there is no express provision, agreement or other basis as to how it should be divided amongst them, equity prescribes that equal division should occur so that each receives an equal share in the property.

51). It will be immediately apparent that there are fundamental preconditions for recourse to be had to the maxim. In the instant case, there are good reasons for not adopting it. There is ample "good reason" for not using that division. The land was always, at all material times before any construction began, in the beneficial ownership of Glenmore, as I have found. Secondly, there is no basis for a finding that there was "concurrent entitlement to identical interests in property" in the instant case.

52). I believe that in order to quantify the equity which I have found that Etla has in the subject property, recourse may be had to the agreement signed between Etla and Everton Witter. There the cost of the building was said to be forty thousand pounds (£40,000.00). This of course does not contemplate any value for the land. I am prepared to hold that Etla's contributions of about ten thousand pounds (£10,000.00) was equivalent to about 25% of the cost of the construction and about 20% of the value of the land with the building on it. I accordingly hold that

Etla is entitled to a 20% interest in the property. This is to be satisfied by the following process:

a). A valuation of the property including a survey thereof is to be carried out by a valuator agreed between the parties within ninety (90) days of the date hereof.

b). If no valuator is agreed within the ninety (90) day period, then the Registrar of the Supreme Court shall appoint a qualified valuator to carry out the valuation.

c). The valuation shall be carried out within sixty (60) days of the agreement being arrived at under a) above or the appointment under b) above.

d). The Defendants shall, within one hundred and twenty (120) days of the receipt of a valuation report from the valuator, pay to the Claimant a sum equivalent to 20% of the valuation so received.

e). If the Defendants fail to make the payment within the period stated in the immediately preceding order, or such longer period as this court shall by order determine, the Claimant shall have the right to purchase the property by paying to the Defendants, eighty per cent (80%) of the valuation provided by the valuator.

f). The cost of the valuation is to be borne twenty percent (20%) by the Claimant and eighty percent (80%) by the Defendants.

53). Despite the suggestions of counsel for Etla I can see no basis in law or in good sense to give to the Claimant a first option to purchase the property.

54). With respect to the remainder of the claim, the Claimant is also entitled to twenty percent (20%) of the net rental of the property since it has been rented out in December 2009. An accounting to arrive at this net figure is to be provided by the Defendants and may include the cost associated with having a person occupy the premises for security purposes.

55). The claim in respect of missing items of personalty made by the Claimant has not been made out. There is no evidence as to who may have taken the missing items from the house. In fact the only item of which there is evidence is the bed which, on Victor Reynolds' evidence, was given to his wife by the Claimant.

56). By the same token the counter claim fails as there is no evidence as to the identity of the persons who may have removed any items and there is certainly no evidence that they were removed by the Claimant or on her instructions.

57). Finally, as far as costs are concerned, the defendants are to have eighty percent (80%) of their costs against the Claimant to be taxed if not agreed.

ROY K. ANDERSON
NOVEMBER 10, 2010