



[2020] JMSC Civ 242

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2010 HCV02288

BETWEEN	AILETTE BAKER	CLAIMANT
AND	LISTON GORDON	DEFENDANT

IN CHAMBERS

Craig Carter and Tia Tomlinson instructed by A. McBean and Co. for the Claimant.

Ashford Meikle instructed by Robinson Gentles and Co. for the Defendant.

Heard: 13th and 14th October, 2020 and 11th December, 2020

Ownership of Land - Constructive Trust - Whether there is Sufficient Evidence of Common Intention - Proprietary Estoppel - Defendant admits receiving a sum of money - Whether moneys advanced was a loan or whether there is sufficient evidence of encouragement, promise or assurance to build on the land, giving rise to a reasonable expectation of proprietary interest in the land.

THOMAS, J.

INTRODUCTION

[1] In a Fixed Date Claim Form filed on the 6th of May 2010, the Claimant, Ms. Ailette Baker, claims against Mr. Liston Gordon, the Defendant, with whom she previously cohabited that she has, on her own, significantly increased the market value of property registered in the name of the Defendant and located at Lot 68 Gold Smith Villa, Mona, Kingston 7 in the parish of St Andrew, by using her personal funds.

received through her employment and from other sources. She seeks the following reliefs:

- (a) That a declaration and or an order be made that the house on the land situate at Lot 68 Goldsmith Villa, Mona, Kingston 7, in the parish of Saint Andrew is owned in the proportion of 70% to the Claimant and 30% to the Defendant;
- (b) That the Claimant is entitled to purchase the Defendant's interest in the said house after the current market value has been assessed or alternatively that the Claimant's name be added the certificate of title as a tenant in common in respect to the property at Lot 68 Goldsmith Villa, Mona, Kingston 7, in the parish of Saint Andrew;
- (c) That the Registrar of the Supreme Court be empowered to sign all such documents to give effects to the Order for Sale in the event of the Defendant's refusal or neglect to comply;
- (d) Damages;
- (f) Interest pursuant to the Law Reform (Miscellaneous) Act or as such rate as this Honourable Court may determine; and
- (g) Costs."

[2] On the other hand, the Defendant is alleging that he commenced construction of the house prior to meeting the Claimant. He alleges that the only sums he received from the Claimant in relation to the construction of the house, are two loans; one towards the construction of the pit and the other for the roofing of the house.

The Evidence

The Claimant

- [3] The Claimant's evidence, contained in Affidavits dated July 14, 2009, November 14, 2011 and June 5, 2015 were permitted to stand as her evidence in chief. She states that that she met the Defendant in the year 2000. At that time, she was living with her daughter Lydia and son Ricardo at 9B Cassia Park Road Kingston 10. "After she and the Defendant became friends". He along with his son, came to live with her and her children at that address She states that at that time, she was the person that paid the rent and all other bills.
- [4] She also states that in April 2001, she went to the USA to work, where she had two jobs and earned a total of USD \$500.00 per week. She says that she would send approximately USD \$400.00 per month to the Defendant for rent, food, electricity and telephone calls. She further states that whenever she returned to the USA she would work for six months per year, from April to October, and return to Jamaica at the end of each 6-month. During those times in the USA she would send money to Mr. Gordon
- [5] She states that Mr. Gordon informed her that he was a security guard, but she nevertheless contends that she did not believe that he was working as she has never seen a payslip for him. She also states that "*Whenever she sent him money he would hold on to it and not want to spend it on food and other household expenses.*"
- [6] She asserts that in December 2002, they moved from Cassia Park and went to live at Temple Hall where the rental was JMD \$12,000.00 per month. She states that the Defendant was reluctant to move to Temple Hall, insisting that instead of paying rent, the money she sent could be used to build a house on the land which he owned in Gold Smith Villa. Consequently, they moved to 68 Gold Smith Villa Mona Kingston 7 in the year 2004. She further states that she gave the Defendant

JMD \$40,000.00 for the erection of the pit and the “building on the land was put up based on the contributions and money which (she) gave to him.”

- [7] She also asserts that after they moved to 68 Gold Smith Villa the Defendant filed a suit in the Parish Court against her son Ricardo Randall and that at that Court the Defendant admitted to her interest in the property.
- [8] Correspondence dated May 29, 2012 from the Civil Division of the Parish Court for Kingston and Andrew as it relates to those proceedings were tendered and admitted into evidence with no objection from counsel for the defence, the details of which will be highlighted in the discussion section.
- [9] She also tendered into evidence a letter dated December 4, 2006 from Daley Thwaites and Co. Attorneys-at-law, asserting that it supports her claim that the Defendant intended for her to have an interest in the property. The details of this letter will also be highlighted in the discussion section.
- [10] On cross examination Ms. Baker states that she met the Defendant in 1999 and at that time she was divorced, having gotten divorced in 1997. They started living together in the year 2000, sometime after came back from America in October 2000. When she left for America in April 2001 she was living on Cassia Park Rd Kingston 9, and was employed to Aulous F. Madden & Co. 6 Lockett Ave., Downtown Kingston. When she came back in October 2001 she was still living at Cassia Park Rd. In April 2001 when she left for the United States of America, (USA)she left her children with Mr. Gordon. When she returned in October 2001, they were still in Mr. Gordon’s care.
- [11] She denies that it was in 2002 that she started to send money to Mr. Gordon. She maintains that at that time when Mr. Gordon came to live with her and the children he was unemployed as she has never seen him going to work, never seen him in a uniform. and he was at home every day.

- [12] She says in April 2001 before she left for the USA she was paying \$6000-\$8000 per month for rent. She affirms that when she was away the USD\$400 she sent to Mr. Gordon was to cover rent, food electricity and telephone bills.
- [13] She agrees that USD \$400.00 during that period would have been equivalent to JMD \$19,000.00, and that she intended that the USD \$400.00 was to be used only for the payment of bills.
- [14] She denies that when Mr. Gordon came to live with her and her children at Cassia Park her rent and telephone bills were in arrears. She states that at that time, she was earning JMD 8000.00-\$9000.00 per month from her job in Jamaica. She also says she was able to pay that sum for rent because her children's father would send them allowances. She, however divulges that this was not consistent. She denies that she leaned on Mr. Gordon for support while she was away.
- [15] She further states that the money she sent to contribute to the construction of the house was in addition to the USD \$400.00 that she was sending. She admits that this was not mentioned in any of her three affidavits. She denies that when Mr. Gordon first took her to Goldsmith Vila there was a building on the land which only needed a roof and for the pit to be "sorted out". She denies that the JMD \$40,000.00 that she gave Mr. Gordon for the construction of the pit was a loan, which was noted in an agreement witnessed by a Justice of the Peace. She however noted that when she gave him the JMD \$40,000.00 "he insisted that he wants (her) to sign".
- [16] She admits that when she moved to Temple Hall in 2002 the rent was JMD \$12,000.00 per month. She denies that it was Mr. Gordon who assisted her in paying the rent. She denies that she caused Mr. Gordon to leave the house at Goldsmith Villa because of threats made to him by her relatives in 2004.
- [17] However, she admits that of the USD \$400.00 she sent each month there was nothing left over to contribute to the building at Goldsmith Villa. She disagrees that

when she was in the USA she was not working enough money to contribute to the building at Goldsmith Villa.

[18] She states that when she returned to Jamaica in 2002 she was earning \$8,000 to \$10,000 per month She concedes that while she was in the USA she had to pay accommodation rent.

[19] She also contends that from her USD \$2,000.00 salary, she would sometimes send USD \$500.00, sometimes USD \$2000.00, and at other times USD \$3000.00 to Mr. Gordon with instructions that these moneys were to be used to build the house. She acknowledges the fact that this information was not included in her affidavits.

[20] She denied the suggestion that the only contributions she made to the house at Goldsmith Villa were loans of JMD \$40,000.00 and \$280,000.00 that she gave to Mr. Gordon. She also rejects the suggestion that she refused to accept repayment of these moneys. She also refutes the suggestion that when she first saw the property at Goldsmith Villa, Mr. Gordon had already built an unfinished house on the property. She however agrees that she sent JMD \$280,000.00 to finish the top of the roof but maintains that it was not a loan.

[21] In response to further questions she gave the following answers:

The construction began between 2002-2003. Completion was in 2004. In total, she says, her contribution to the construction was approximately JMD\$1.5 million - \$1.7 million. She agrees that in 2003, at the then rate of USD \$1.00 to JMD \$48.00, JMD \$1.5 million was equivalent to USD \$32,000.00. She agreed further that that would be equivalent to earnings of about USD \$2,600.00 per month. She also states that in addition to her salary she received other sums of money in the form of tips which she used to purchase her" food".

Witness for The Claimant Lydia Randall

[22] Ms. Lydia Randall is the daughter of the Claimant. In her evidence in chief, she states that she met Mr. Gordon in 2000 when her mother began a relationship with him. Her mother went to the USA to work shortly thereafter and when she returned Mr. Gordon and his son moved in to live with them at Cassia Park. When her mother returned to the USA to work, Mr. Gordon and his son continued to live with them. She states that her mother sent money to cover expenses for utilities, rent, pocket money and to build the house at Gold Smith Villa.

[23] She further states that she first saw the land in Goldsmith Villa in 2002 after they went to Temple Hall to live. Then, it was bare and empty of any structure or building. She further states that her mother, herself, Mr. Gordon and her brother Ricardo moved to Temple Hall for a year. According to her, that was when the construction of the house at Goldsmith Villa began. She says she knows that her mother spent large sums of money on the house.

[24] On cross examination she states that her mother sent the money through FedEx and Western Union. She also states that when the house reached a certain stage, they moved in and after they moved in, her mother continued to travel to the United States of America and send money to Mr. Gordon. She claims that she knows for a fact that the money Mr. Gordon collected was not just USD \$400.00 but other moneys for building the house as sometimes she would accompany Mr. Gordon to Western Union to sign the money transfer form for him. She says her mother stopped sending money to Mr. Gordon between 2006-2007.

[25] The house is now complete, she says, but there is another building on the land that is unfinished because her mother stopped sending money.

The Case for the Defendant

[26] The evidence of the Defendant Mr. Liston Gordon is that he first met the Claimant in 1999. They thereafter became friends, but did not start an intimate relationship

until 2002, and he subsequently went to live with her and her son and daughter. He agrees that the Claimant sent a monthly sum of USD \$400.00 which was used for rent, food, electricity and telephone bills and to feed her children.

[27] He further states that he made payments into her personal account and paid sums towards the maintenance of the Claimant's children from that USD \$ 400. He says that none of that monthly sum of USD \$400.00 was used for the construction of the house. He also states that the Claimant did not send any other moneys directly for the construction of the house at Gold Smith Villa.

[28] He contends that he already had an unfinished house at 68 Goldsmith Villa when he started living with the Claimant. He bought the land in the year 2000 from the Ministry of Housing Operation Pride Project. He commenced the construction of the house, which consists of 2 bedrooms, living room, kitchen and bathroom, in 2001, but it was not complete as there was no roof, electricity, water, nor tiling. He says he spent a total of \$110,165.14 of his own money on the house.

[29] He also states that he was employed in 2001 and all other material times. He worked at Grace Kennedy, Securicor Courts Jamaica LTD and with Doctor Carter in St Mary He says that in 2002, before they moved to Temple Hall, he took the family to Goldsmith Villa and showed them the building because he wanted the Claimant to know what he was doing.

[30] He says the Claimant loaned him JMD \$40,000.00, not to erect, but to cover the pit, and that there was a loan agreement to this effect. The document that he refers to as the "loan agreement", was admitted into evidence with no objections from the attorneys-at-law for the Claimant. He also says that the Claimant loaned him an additional sum of JMD \$280,000.00 to put the roof on the house at Goldsmith Villa. He however says that she has refused repayment though he was always ready, willing and able to repay her, and that caused "a falling out in 2004".

[31] He refutes the Claimant's evidence that he told her that the money she was paying for rent could be used to build a house on his land. He admits, however, that he

did not agree to move to Temple Hall, on the basis that the rent was expensive and the Claimant could not afford it. He says that he proposed the moved to Goldsmith Villa in 2004 because he had borrowed the money to cover the pit and to put on the roof. The kitchen cupboard he says was installed by his Aunt and he paid all the expenses for tiling, installing water and electricity and the addition of a room for his son.

- [32]** He states that what transpired at the Parish Court was that he told the judge that he borrowed money from Ms. Baker for the roofing of the house and the covering of the pit, and the “judge said she had an equitable interest in the house”.
- [33]** On cross examination he states that he moved out of the house in Goldsmith Villa in 2007. He agrees that when he purchased the property there was no building on it. He also admits that the proceedings against Ms. Baker’s son in the Parish Court were commenced in 2006, when Ms. Baker was not in Jamaica. He however states that, she later returned to Jamaica and attended a hearing of that matter. He asserts that both he and Ms. Baker appeared before and spoke to the judge when he explained to the judge that he had agreed to borrow money from Ms. Baker, and the judge said “she (Ms. Baker) had an equitable interest in the house”.
- [34]** He recounts visiting the law offices of Daley Thwaites & Co. after he and Ms. Baker spoke to the judge in the Parish Court in November 2006. The total amount of money he says that he owes Ms. Baker is JMD \$320,000.00 to include the \$40,000.00 that he borrowed to cover the pit. He admits receiving a portion of this money through one Alecia Gayle. He however denies receiving USD \$7000.00 from Alecia Gayle.
- [35]** He says that the disagreement and “split” between himself and the Claimant was due to the fact that he attempted to repay her and she refused the repayment. He however contends that the Claimant’s friend, one Alga Rowe, was a witness to the loan agreement between himself and the Claimant for the JMD \$40,000.00 that he borrowed.

- [36] He insists that he did not tell Ms. Baker that the house would be for both of them when it was built, as the house was built in 2001 before he met Ms. Baker. He denies the suggestion that he told Ms. Baker that he was building the house for her to stop paying rent. His response to that suggestion is that he borrowed the money from her in order to put the roof on the house because she was paying JMD \$12,000.00 for rent while earning JMD \$13,000.00, which he considered to be “rubbish”.
- [37] On re-examination he explained that of the JMD \$280,000.00 loan, Ms. Baker sent JMD \$200,000.00 first through Alecia Gayle. The other JMD \$80,000.00 came from the Claimant’s bank account. He says that he does not recall the exact cost of building the house in 2001 but in addition to his personal funds, he received contributions from former employers, one of whom he says he lived with at the time, and who purchased the first tonne of steel

THE ISSUES

- [38] The issues which emerge on the evidence are:
- (i) What was the sum of money that the Defendant received from the Claimant;
 - (ii) Whether there was a common intention between the Claimant and the Defendant, in relation to this sum, that the Claimant should have derived a proprietary interest in the house;
 - (iii) In the alternative, on the doctrine of Proprietary Estoppel, whether the Defendant encouraged the Claimant to expend money on the property with an expectation that she would have an interest in the property;
 - (iv) Whether the Claimant, relying on the encouragement, promise or assurance of the Defendant, acted to her detriment.

DISCUSSION

What sum if any did the Defendant receive from the Claimant in relation to the construction of the house at Goldsmith Villa

[39] It is my view that the main issue in this case is one of credibility. It is trite law that in a civil claim the Claimant bears the burden of proof, upon a preponderance of probabilities, that she is entitled to the remedies sought. Therefore, my approach to the assessment of all the evidence in this case is with a view to decide whether or not the Claimant has discharged this legal burden.

[40] In assessing the evidence of the Claimant as it relates to this issue, I find that there are significant factors that have seriously affected the credibility of her evidence. She did say she went to United States to work in April 2001 and that during this period, she would send to the Defendant approximately USD \$400.00 per month. However, this sum, she states was for rent, food, electricity and telephone calls.

[41] On her case, the discussion surrounding her contribution to the house would have been sparked by her intended move to Temple Hall. Her evidence is that the Defendant did not want to move to Temple Hall, and expressed to her that instead of paying rent, she should use that money to build a house on the land that he owned. Her exact words were "he insisted that instead of me paying rent, the money I send could be used to build a house on the land which he owned". Therefore, in this alleged discussion there was no request from the Defendant for any additional sum, apart from the rental sum, to contribute to the building of the house on the land. In fact, on the Claimant's evidence there was no indication of any discussion for her to pay moneys towards any construction prior to the intended move to Tempe Hall.

[42] Further, her evidence is that they moved to Temple Hall in December 2002. She went back to the United States to work and "send him money". She stated in her affidavit dated 14th of July 2009 that she gave the Defendant "\$40,000.00, for the

erection of the pit, and the building on the land was put up based on the contributions and the moneys which (she) gave him”.

[43] However nowhere in her evidence in chief did she indicate that she sent any specific sum to the Defendant apart from the USD \$400.00 per month and the JMD \$40,000.00 towards the pit. It was only on cross examination that she mentioned that she “sometimes send \$500.00, sometimes \$2000.00, sometimes \$3000.00”, and that when she sent the money, her instructions to Mr. Gordon were that it is for him to build the house. However, this information was conspicuously absent from all of her three affidavits that stand as her evidence in chief.

[44] I therefore find it very instructive that in addition to the \$40,000.00 that she mentioned that she contributed to the construction of the pit, the only other sums she took time to mention in her evidence in chief is the USD \$400.00 that she sent monthly for bill payment. However, she now says that this is not the sum she is relying on to establish her case. Therefore, in light of the fact that the gravamen of her case is about moneys contributed for the construction of the house and not about moneys sent for payment of bills, I find it quite inconceivable that, had she in fact made such significant contributions of JMD \$1,500,000.00- \$1,700,000.00, she would have delayed until cross examination to give the specifics relating to the contribution of these sums.

[45] That is, while mentioning the smaller sums of JMD \$40,000.00 and USD \$400.00, she failed to mention these significant sums of USD \$2000.00 and USD \$3000.00, bearing in mind that the burden of proof rests on her. Additionally, the fact that on her case some of these moneys were sent through Western Union and FedEx, it is only logical that I would expect to find some supporting evidence in the form of documentary proof from these agencies.

[46] In paragraph 9 of the affidavit dated the 14th of November 2011 she does indicate that she is exhibiting all the postal slips which she sent. However, during the trial, none of these were tendered to be admitted into evidence. It is also clear that this

is not an oversight, as enquiry was made by the court of Counsel for the Claimant and he indicated that he does not intend to rely on these, as the Defendant had admitted receiving sums of money from the Claimant.

- [47] However even if it were to be found that these copy documents form part of her evidence based on her reference to them in her affidavit, these would not have affected my view of her claim on this issue. Among these documents are copies of documents which appear to be issued by Western Union. The sender is noted as Ms. Baker and the receiver Mr. Liston Gordon. The sums vary from a low of USD \$70.00 to a high of USD \$600.00. In fact, only one receipt was for USD \$600.00 and one for USD \$550.00, one for USD \$500.00 and the other sums were between USD \$70.00 and USD \$300.00. These also reflect the amount Mr. Gordon would have received in Jamaican dollars. The total does exceed the monthly USD \$400.00 that would have been sent for the period.
- [48] There were some other document purportedly sent by postal express to one Alecia Gayle. That is, "Liston Gordon care of Alecia Gayle" in the sums of USD \$1250.00, \$3,500.00, \$1325.00, \$800.00 and \$3500.00. All these figures appear to be written over in ink, rendering it difficult to decipher the original figures. However, in the absence of an admission by the Defendant and any evidence from Ms. Gayle that the latter sums were in fact given to the Defendant, this would not assist the Claimant.
- [49] Her evidence is that the house was constructed between 2002 to 2003 and that in that period she sent to Mr. Gordon JMD \$1.5 million to JMD \$1.7 million for the construction of the house. She agrees that at the time this JMD \$1.5M when converted would value USD \$32,000 at the rate of 48:1, and that this would be convert to USD \$2,600.00 per month.
- [50] Further, her evidence is that while working in the United States she worked USD \$500.00 per week, that is, USD \$2000.00 per month. It is also her evidence that she only worked 6 months per year in the United States. The total sum that she

would have sent for household expenses for that period would have amounted to USD \$16,000.00.

[51] However, if I were to subtract the monthly sum of USD \$400.00 that she sent for household expenses, from her monthly salary of USD \$2000.00 she would have a monthly balance of USD \$1600.00. As such, if I were to calculate the sum total of her remaining earnings at USD \$1,600.00 per month for the 6-month periods that she worked in the United States in the years 2002 and 2003, the total would be USD \$19,200.00. When this is converted to Jamaican Dollars at the then prevailing rate of JMD \$48.00 to USD \$1.00, the sum would be JMD \$921,600.00.

[52] Therefore, despite the assertions of the Claimant, I find it quite incredible that she would have sent all this remaining balance, a sum which is, in any event, way below the sum that she is alleging that she sent. Additionally, this sum is calculated without taking into consideration her expenses for her upkeep, food and rent while in the United States of America. I am aware of the fact that the Claimant has said on cross examination that while working, she got tips which she used to purchase food. However, I am not convinced by this evidence as it is vague and lacks any amount of clarity. Consequently, I find the evidence of the Claimant quite imprecise and unconvincing on this issue.

[53] The evidence of her supporting witness Lydia Randall has done nothing to enhance the Claimant's case on this issue. Ms Randall states that she knew that her mother sent more than the USD \$400.00 per month, as she accompanied Mr. Gordon to collect moneys at Western Union, and that she even signed the forms. She has nevertheless failed to state how much money was received by Mr. Gordon on any of those occasions. She also states that unless her mother sent money, construction materials were not bought. Yet she has also failed to state what materials were bought when the moneys were sent.

[54] I find that the Defendant has provided more convincing evidence on this issue. From his initial Affidavit in response to the Claim, along with his Affidavit filed on

the 31st of August 2015, Mr. Gordon has maintained that the only sums he received from the Claimant as it relates to the construction of the house were loans of JMD \$40,000.00 to cover the pit and JMD \$280,000.00 to put on the roof.

[55] He has also provided details of specific sums he received, that the JMD \$40,000.00 was received from the Claimant personally while she was in Jamaica and that he received the other \$280,000. in two tranches; a portion through Alecia Gayle and the other portion through Lydia, from the bank. I find his evidence to be more consistent and credible. Therefore I find that the Claimant has failed in her obligation to adduce sufficient evidence that she gave to the Defendant JMD \$1,500,000.00 - \$1,700,00.00. However, the Defendant has admitted receiving JMD \$320,000.00. Consequently, I find that in light of this admission the sum received by the Defendant from the Claimant is the sum admitted by the Defendant that is JMD \$320,000.00

Whether the Claimant has acquired a Proprietary Interest in the property at 68 Goldsmith Villa

The Law

[56] The doctrine of proprietary estoppel is founded on the principle: that it would be unconscionable to allow the owner of land who encourages a person to expend on his land to his detriment by a promise, encouragement or assurance in sufficiently clear terms that, that person, will acquire an interest in the land, to insist on his strict legal right, without recognizing or accepting the entitlement to that person of a proprietary interest in the land. This principle was clearly expressed in a line of cases such as **Dillwyn v Llewellyn** (1862) 45 ER 1285; **Inwards and Others v Baker** (1965) 2 Q.B **Pascoe v Turner** [1979] 1 WLR 431; **Thorner v Major** [2009] UKHL 18, **Gilbert v Holt and Anor** (2000) EWCA Civ 56, **Caren Cranston v Tamazine Samuels and Gairy Toorie** [2019] JMCA Civ. 42 **Horsford v Horsford** [2020] EWHC 58.

SUBMISSIONS

For the Claimant

[57] The Attorneys for and on behalf of the Claimant in his first set of submissions relying on the case of **Grant v Edwards [1986] 1 Ch. 638**, sought to convince the court that the Claimant is entitled to a proprietary interest in the property on the principle of the creation of a constructive trust by common intention. In that case it was stated that in order to succeed on a claim for a declaration of constructive trust, a claimant must establish that “(a) there was a common intention that both should have a beneficial interest; (b) that the Claimant has acted to his or her detriment on the basis of that common intention.”

[58] However subsequent to the hearing of the evidence Counsel filed further supplemental submissions conceding that the evidence does not support a claim in favour of the existence of a constructive trust. Relying on the case of **Philip Henry v Patsie Perkins Reid [2012] JMSC Civ. 109**, he states:

“where a crucial distinction with the case at bar is highlighted at paragraph 30, that the common intention to share in the property must be co-existent with the acquisition of the property, further that if the parties did not consider the vesting of the beneficial interest at the time of the acquisition of the property, then a claim having common intention as its substratum must fail, we hereby withdraw our arguments based on the principles of a common intention constructive trust.”

[59] He further submits that the circumstances of the case also falls within the consideration of the principles of proprietary estoppel, under which the Court may yet still be empowered to make the orders requested by the Claimant. His submissions continued as follows:

“On the invitation of the Defendant and on the promise that she would have an interest in the subject property, the Claimant directly and indirectly contributed to the construction of a building on the subject property to be used as the home of both parties. The Claimant provided at a minimum, sums in the amount of \$320,000.00 attributable to improvements to the property, she asserts that she provided much more sums to the Defendant for the construction of the house, fixtures and amenities on the subject property in addition to other daily living expenses. Through-out the cross-examination of the Claimant there was much ado of her resources, however what is accepted is that the Defendant did in fact receive sums of money from the Claimant which were directly attributable to the construction or completion of the house subject of this claim. What is of even greater significance is that the Defendant has failed to address those two exhibits tendered on behalf of the Claimant, wherein not only the Defendant’s former Attorneys-at-Law but also a sitting Resident Magistrate confirmed that the Defendant indicated that the Claimant indeed held an equitable interest in the property subject of this Claim. Throughout out cross-examination of the Defendant Counsel for the Claimant sought to establish and did establish that Defendant and the Claimant resided together as man and wife, not upon an intention to claim any relief under any particular statute but rather to provide the rationale upon which the Claimant asks this Honourable Court to accept that on a balance of probabilities the Defendant made a promise to the Claimant that should she assist him in the building and/ or completion of the house situate on the subject property that she would share in the property with him equally, as is confirmed by the two exhibits aforementioned. The Defendant asks this Court to believe that he took a loan from the woman he lived with and considered his wife, in support of which he tendered a document purporting to be a loan agreement for the amount of \$40,000.00, which did not bear her signature. In the circumstances we ask that the Claimant be granted a declaration that she is entitled to share in the beneficial interest of the subject property. While

the Claim originally pursued 70% interest in the subject property, We hereby submit that the appropriate interest ought to be that of 50% pursuant to the promise of the Defendant, which the Claimant has testified to and the conduct from which we ask this Court to infer that said promise was indeed made evidenced from the Defendant's instructions to his lawyers and the Resident Magistrate according to the exhibits tendered into evidence."

[60] He relies on the cases of **Dillwyn v Llewelyn (1862) 4 De G.F. & J** and **Inwards v Baker [1965] 2 Q.B. 29**. And **Pascoe v Turner [1979] 1 W.L.R. 431**.

Submissions of the Defendant

[61] Counsel for the Defendant submits that the Claimant has not proven to the Court that the Defendant induced, encouraged or allowed her to believe that she has or will acquire some right or benefit in property and that in reliance upon this belief, she acted to her detriment. (He relies on the cases of **Dillwyn v Llewelyn (1862) 45 ER 1285** and **Inwards and Others v Baker (1965) 2 Q.B, 29**)

[62] His view of the evidence is that the Defendant's invitation to the Claimant was that of a purely domestic arrangement. He further submits that the Claimant fell short on the issue of credibility as she failed to point to specific contributions or to produce tangible evidence of her contribution to the construction of the building at Lot 68 Goldsmith Villa.

[63] He also points out that:

"the Claimant claimed, in paragraph 9 of her 6th May 2010 affidavit that it was her money that was used to construct the house at Lot 68 Goldsmith Villa, is contradicted by paragraph 7 of her affidavit filed 16th November 2011 in which she admitted that there was an existing structure at Lot 68 Goldsmith when she first went there. The admittance is also variance with the Claimant's sole witness, Lydia Randall, who claims that when she first saw the land at Lot 68 Goldsmith Villa in 2002, that is was 'bare, empty of any structures or buildings"

[64] In distinguishing the cases of *Dillwyn* and *Pascoe* from the instant case, he submits that in the instant case “the Defendant never told the Claimant that she could have Lot 68 Goldsmith Villa. The Claimant herself has never asserted this; she only maintains that she spent money on the subject property.”

[65] In commenting on the letter from the Corporate Area Parish Court he submits that:

“the action was not an action between the Claimant and the Defendant and that the Defendant is on record as saying that he borrowed \$40,000.00 another \$280,000.00. Legal terms such as equity which was [sic] no doubt raised by the Honourable Judge without the Defendant having the benefit of an attorney present in the court. The admission, of equity is not the same as saying that the Claimant has a beneficial interest in the property.”

[66] He also submits that:

“The Defendant was firm and believable. Under cross-examination, the Defendant noted that part of the money that was lent to him by the Claimant for the roof actually came from the co-worker. The Defendant spoke about this money in his affidavit. Inexplicably, the Claimant has never addressed this huge sum of money advanced to the Defendant. On cross examination she introduced new evidence which were at substantial variance with her affidavits. Her explanations could not be reconciled with her affidavit”

Discussion

[67] The Claimant through her attorney-at-law, initially sought to ground the claim on the principle of constructive trust and common intention. However, as the evidence unfolded the attorney-at-law had a change of course. He has now employed the principle of proprietary estoppel as the fulcrum for the claim.

[68] In order to succeed on the principle of proprietary estoppel, the Claimant must establish 3 basic elements. These are (i) promise, encouragement or assurance, expressed in sufficiently clear terms moving from the defendant to her (ii) That it

was reasonable for her to rely on this promise, encouragement or assurance and that she did in fact rely on this promise, encouragement or assurance and (iii) that in relying on this promise, encouragement or assurance she acted to her detriment, and so it would be unconscionable to deny her the right to a proprietary interest in the property.

[69] Therefore, the issue as to whether the Claimant is entitled to any proprietary interest in the house at Goldsmith Villa is dependent on whether the JMD \$320,000.00 which she gave to Defendant represents her contribution to the construction of the house as a result of encouragement, assurance and or promise from the Defendant that she would acquire a proprietary interest in the property. Therefore, I am obliged to examine the evidence in order to first of all establish the purpose for the money that the Defendant admits receiving. That is, whether the evidence supports a finding that the Defendant encouraged the Claimant to send these sums towards the construction of the house with the assurance that she would receive a proprietary interest in the house.

[70] In the case of **Pascoe v Turner (Supra)** the Defendant had been assured by the plaintiff that 'the house is yours and everything in it.' In reliance on that assurance she carried out improvements to the house. Although the improvements were modest, the cost represented a large portion of the Defendant's savings. She sued on the basis of the establishment of a constructive trust of the entire beneficial interest. The court found that she had failed on the principle of constructive trust but nevertheless found that an equity in the form of a proprietary estoppel had been established.

[71] In the instant case the Claimant has not explicitly stated that she was encouraged or promised by the Defendant that she would be given a proprietary interest in the house at Goldsmith Villa. Neither has she specifically stated that in sending the money to Mr. Gordon, she was motivated by the belief that she would derive a proprietary interest and that Mr. Gordon was aware of this belief and did nothing to dispel it.

- [72] However a view may be taken that her allegations that she was told by the Defendant that the money that she was using to pay the rent could be used to build a house on his land, if accepted, can in fact be interpreted as an encouragement to construct a house of her own on his land for her benefit instead of living in a house that she did not own and for which she had to pay rent. The Defendant has denied making any such statement.
- [73] . The cases have established that where, in the presence of encouragement, promise or assurance the Claimant by her expenditure improved on the Defendant's property. "*The burden of proof falls on the defendant to show that the claimant's conduct was not induced by his assurances. The extent of the equity is to make good the claimant's expectations*" (See ***Caren Cranston v Tamazine Samuels and Gairy Toorie*** [2019] JMCA Civ. 42 paragraph 60). That is, once there is credible evidence of a promise, encouragement or assurance a rebuttable presumption arises that the Claimant's expenditure on the property was in reliance on that promise, assurance or encouragement. Therefore, I first have the task of determining whether this statement was in fact made before I can even arrive at a conclusion as to whether the statement was sufficiently unequivocal so as to amount to an encouragement on which the Claimant could reasonably place reliance.
- [74] Having assessed the evidence, I find that there are so many contradictions on the Claimant's case that cause me to reject her assertion that this statement was in fact made or even that she was encouraged in anyway by the Defendant to construct the house at Goldsmith Villa. As previously discussed, I find that the evidence of the Claimant lacks credibility in relation to the amount of money that she actually gave to the Defendant in relation to the house at Goldsmith Villa. The case of the Claimant is tantamount to this: she relied on the offer or encouragement of the Defendant, who owned land but had no house thereon, to build a house on his land as an alternative to her paying rent. She also contends that it was her own money alone that built this house.

- [75] However, her evidence on cross examination is that the Defendant wanted her to sign an agreement for the sums, would dispel any notion that there was any such encouragement on the part of Mr. Gordon or that there was any basis for the Claimant to harbour any such belief. The document, which Mr. Gordon refers to as the "Loan Agreement", despite not bearing the Claimant's signature, was dated in 2003. I therefore conclude that from 2003 she knew that Mr. Gordon did not intend for her to have proprietary interest in the house.
- [76] The fact is, expenditure on someone's property may give rise to a claim for recovery of the value of the expenditure but does not automatically give rise to a proprietary interest on the basis of proprietary estoppel. The elements previously outlined must be established.
- [77] In assessing the credibility of the Claimant, it is my view that in the same way that she particularized the sum she gave in relation to the pit, had she, in reliance on any encouragement from the Defendant, provided the money for the construction of the house at Goldsmith Villa, she would have furnished more details on the sum sent with regards to the stages of construction, bearing in mind that it is her evidence that it was her sole contribution that "built the house from scratch.'
- [78] It is reasonably expected of the Claimant in these circumstances to give credible evidence as to the particular purpose in each stage of the construction process for which each sum was sent. That is whether, it was for building materials such as blocks and cement, or to pay labourers or for electrical and plumbing services etc. Additionally, the conversation, if any, with the Defendant that prompted her to send each sum would not only be relevant but crucial for this court to truly assess the issue of encouragement and reliance. This is in light of the fact that on the Claimant's evidence, the initial statement suggested that the encouragement was in relation to the money that was being used to pay the rent.
- [79] Additionally, the fact is that the Claimant's evidence is that she was only in the United States of America, 6 months per year. Against this background in assessing

the credibility of her case, it is reasonably expected that she would have given evidence on the progress of each stage of the construction of the house on each occasion she returned to Jamaica.

- [80]** Significantly, the Claimant has not denied that the land was previously owned by the Defendant but has insisted on cross examination that there was no unfinished house on the land and that it was her money that built the house. Nevertheless, her evidence in chief at Paragraph 7 of her Affidavit dated the 14th of November 2011 contradicts this assertion. She states that:

“save that there was an unfinished house on the property situated at Lot 68 Gold Smith Villa Mona Kingston, paragraph 7 of the Respondent’s Affidavit is denied and I repeat paragraph eight of my affidavit in support of Fixed Date Claim Form.”

- [81]** Paragraph 7 of the Defendant’s Affidavit in Response reads:

“In response to paragraph 7 the situation was I had an unfinished house at 68 Goldsmith Villa, Mona, Kingston. It was not a case of building a house from scratch. I did not tell her that the money for rent could be used instead to build a house on the land”

- [82]** There was no attempt by the Claimant to clear up this inconsistency which remains unresolved and goes to the gravamen of her case, which is that it was her money that built the house on the land at 68 Goldsmith Villa.
- [83]** Furthermore, the Claimant, despite insisting that it was her money that built the house, claims that she is entitled to 70% of the property and the Defendant to 30%. There is no explanation as to how she arrives at this apportionment. It may very well be that it is her position that the land only represents 30% of the value of the entire property. However, no evidence has been adduced to support this position and this Court is not permitted to speculate. There is therefore no evidential basis

on which I can arrive at a conclusion that the Claimant is entitled to 70% of the value of the property.

- [84] The Claimant is also seeking to rely on an order from the Kingston and St. Andrew Parish Court on ***Plaint 2571/2006 Gordon v Ricardo Randall***. This order reads: *“Order that the Defendant admits that the Plaintiffs mother has equity in the premises amount of which is to be determined” Consent Order for the valuation of the premises.*”
- [85] That matter was set for trial and later withdrawn by the Plaintiff Mr. Gordon, who is the Defendant in the case at bar. However, when I examine the content of the order against the circumstances, as explained by the Defendant, (which has not been rebutted by the Claimant), I am hesitant in arriving at a conclusion that this amounts to an admission by the Defendant that he encouraged the Claimant to build on his land with the belief that she would acquire a proprietary interest in his property.
- [86] These are my reasons: (i) The nature of the equity is not stated in the order (ii) The existence of an “equity” is a legal determination, and there is no evidence that the Defendant was represented by counsel in the Parish Court. Therefore it would have been helpful if the words used by the Defendant, formed a part of the records that were produced, so as to establish the basis for the conclusion that he was in fact admitting to an equitable interest in favour of the Claimant.
- [87] The Defendant has indicated that he told the Parish Court Judge that he used the money that he borrowed from the Claimant to cover the pit and put on the roof and the Honourable Judge told him that the Claimant has an equitable interest in the property. This has not been rebutted by the Claimant. Therefore, I am constrained to say that it is unreasonable for me to rely on this order as a basis for a decision that the Defendant has admitted to the type of proprietary interest now being claimed by Ms. Baker.

[88] In support of her case, the Claimant also relies on a letter from the law office of Daley Thwaites & Co. dated December 4, 2006, which was admitted into evidence as exhibit 2. The letter indicates that Mr Gordon visited the office with Ms. Baker and expressed a wish to add her name to the title for the property to “enable her to have equal share” in the property. I note that this correspondence does not point to any admission on the part of the Defendant that Ms. Baker contributed to the building despite it indicating that he wanted to add her name to give her 50% share (as his common law wife).

[89] While subsequent conduct amounting to admission can go to support the claim of initial encouragement and expenditure in reliance on this encouragement, I find that this evidence does not support such a finding. The fact that the Defendant evinced an intention to add the Claimant’s name to the title some three years after he would have received the moneys from her and 5 years after he would have acquired the land, does not by itself suggest that she is entitled to ownership in the property or even that she contributed to improvement thereon.

[90] In the case of *Dillwyn v Llewellyn* (1862) 45 ER 1285 the court stated that:

“A voluntary agreement will not be completed or assisted by a Court of Equity, in cases of a mere gift. If anything be wanting to complete the title of the donee, a Court of Equity will not assist him in obtaining it; for a mere donee can have no right to claim more than he has received. But the subsequent acts of the donor may give the donee that right or ground of claim which he did not acquire from the original gift” (see page .1286)

[91] There must be credible evidence on the part of the Claimant to connect the moneys to the construction of the house. In any event, I cannot view this intention and or conduct on the part of the Defendant in relation the aforementioned correspondence in isolation. I must view it in light of the Defendant’s evidence that this occurred after he told the Judge at the Kingston and St. Andrew Parish Court that the Claimant loaned him moneys to put on the roof and pit and the Judge told him that that amounted to an equitable interest.

- [92]** This evidence as earlier indicated has not been rebutted by the Claimant. This is within the context that Mr. Gordon testified that he and Ms. Baker were both present in court at the time. That is, he and Ms. Baker “faced the judge and talked to the Judge at the same time”. In fact, the contents of the letter conflict with the evidence of the Claimant in relation to her contribution to the building of the house, as also the contents of her claim. The contents suggest that they visited the offices of Dailey Thwaite together. Therefore, the Defendant would have expressed a willingness to put her name on the title for the property for her to have a 50% share in the property, in her presence. There is no indication that she had any objections to this and no explanation as to why she would not have objected, in light of the fact that her evidence is that the house was constructed by her sole contribution, and in her Claim she is seeking a declaration that she is entitled to a 70% percent share in the property.
- [93]** The Defendant has tendered into evidence various receipts totalling over JMD \$107,000.00 for building materials, to include steel, blocks sand and gravel. These bear dates between May and August 2001. In fact, only one receipt is dated August 2002 for 315 blocks.
- [94]** His evidence is that it was out of concern of the Claimant’s ability to pay rent at Temple Hall, that he felt that she could not afford from her salary in Jamaica, that he opposed the move to Temple Hall. It is also his case that he suggested that they move to his house as he had borrowed her money to put on the roof and cover the pit. The Claimant has not denied that when she was not in the United States working her salary could not cover her expenses. She however said she made up the short fall by contribution of the children’s father. She nonetheless has stated that this contribution was inconsistent.
- [95]** On cross examination the Claimant did admit that she gave to the Defendant the sum of \$280,000 to put on the roof but insist that it was not a loan. However as previously indicated she has offered no reasonable explanation as to why she failed to mention this sum in her evidence in chief.

[96] However, my view of the evidence is that she failed to do so because she knew that, in addition to the JMD \$40,000.00 for the pit, this was the only other sum she gave to the Defendant as it relates to the house. She knew that if she were to accept that these sums were loans it would defeat her Claim to a proprietary interest in the house.

[97] The Defendant's evidence, which I find to be more credible, is that apart from his own personal funds, he received assistance from previous employers whom he has named and his aunt who put in the kitchen cupboard. Despite the absence of evidence from these persons, I find that when I balance the case the evidence of the Defendant is more consistent.

[98] Further, in terms of reliable supporting evidence, his case has outweighed that of the Claimant. I accept his evidence that he did not encourage the Claimant, whether by word or conduct, to construct a house on his land with a promise that she would derive a proprietary interest therein. I accept his evidence that in 2002 when he started a relationship with the Claimant, there was already a house on the land with the exception of a roof and electrical and plumbing work. I accept his evidence that he borrowed the JMD \$320,000.00 from the Claimant to cover the roof and the pit. I, therefore find that the Defendant has successfully rebutted any presumption that the Claimant has acquired any proprietary interest in the property at 68 Goldsmith Villa.

[99] In light of the foregoing I find that, on a balance of probabilities. the Claimant has failed to discharged her burden, to prove that she has any proprietary interest in the property at 68 Goldsmith Villa.

Conclusion

[100] I find on the evidence that the Defendant did receive from the Claimant a total of JMD \$320,000.00 which was used to cover the pit and put on the roof of house at 68 Goldsmith Villa. I find that the Claimant has failed to adduce credible evidence of encouragement from the Defendant for her to use this sum or any other sum to

finance the construction of the house based on a promise of proprietary interest in that house. Essentially I find that the Defendant has successfully rebutted the evidence of the Claimant in this regard. Consequently, I find that the Claimant has failed to establish that she is entitled to proprietary interest in the house at 68 Goldsmith Villa. I therefore enter Judgment in favour of the Defendant in relation to the ownership of the house.

[101] However, I find that the Claimant is entitled to the return of JMD \$320,000.00 with interest. There is no evidence as to when it was agreed by the parties that the sum should have been repaid. I take note of the fact that the Defendant states that his attempt at repayment was refused. However, in order to convince this court of his readiness and willingness to pay, having been served with the claim he could have applied to pay the money into court. This was not done. Accordingly, I will order that interest begin to run from the date of the service of the Claim Form.

[102] However, I also take into consideration the fact that on both sides it is not denied that the Claimant has been in possession of and benefitting from the occupation of property to the exclusion of the Defendant from 2006. Therefore, whereas I would have awarded interest at a rate of 6%, I award interest at the rate of 3% on the JMD \$320,000.00 from the date of the service of the Claim Form to the 11th of December 2020.

[103] ORDERS

- (i) Judgment for the Defendant in relation to the Declaration of Ownership of 68 Gold Smith Villa.
- (ii) I declare that the Claimant has no proprietary interest in the property at 68 Gold Smith Villa.
- (iii) The Defendant is entitled to recover possession forthwith.
- (iv) The Claimant is entitled to the return of \$320,000.00 at the rate of 3% from the date of the service of the Claim Form to the Date of Judgment
- (v) Cost to the Defendant to be agreed or taxed.