[2024] **JMSC Civ 125**

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023 CV 00125

IN THE MATTER OF ALL THOSE parcels of land parts of INDUSTRY PEN in the parishes of SAINT ANN and SAINT MARY BEING THE Lot numbered THREE (SECTIONS ONE, TWO AND THREE) on the plan of part of Industry Pen being the land comprised in Certificate of Title registered at Volume 1434 Folio 466

AND

In the matter of a determination of an equitable interest

BETWEEN	**CHARLES BROMFIELD**	**CLAIMANT**
AND	**GOBIND DANSINGHANI**	**DEFENDANT**

IN OPEN COURT

Mr. Hadrian Christie and Mrs. Stephanie Lowe Chin instructed by Watson, Mendez and Co for the Applicant.

Mr. Leroy Equiano instructed by Duncan Ellis and Co for the Respondent.

CIVIL PROCEDURE: Consolidated Claims- Fixed Date Claim Form and Affidavit and Claim Form and Particulars of Claim - Notice of Application for Summary Judgment and Notice of Application for First Hearing to be treated as a Trial of the Matter filed before consolidation - Effect of consolidation of applications - Joint Venture - beneficial interest - proprietary Estoppel - Constructive Trust

Heard: May 16, September 27 and October 11, 2024

JUDGE: JUSTICE O. SMITH (AG)

INTRODUCTION

[1] This matter concerns two businessmen, Charles Bromfield who gave his address as Kingston Jamaica and Gobind Dansinghani, who gave an address in Canada.

[2] There are two claims concerning the parties before the Court: Claim No. SU2022CV04026 commenced by Fixed Date Claim Form filed on December 21, 2022, in which Gobind Dansinghani is the Claimant and Charles Bromfield is the Defendant and Claim No SU2023CV00125 commenced by Claim Form and Particulars of Claim filed on January 19, 2023 in which Charles Bromfield is the Claimant and Gobind Dansinghani is the defendant.

[3] In Claim No. SU2022CV04026 Dansinghani is seeking the following orders:

> 1. That it is ordered that the Caveat Number 2378442 endorsed on Certificate of Title registered at Volume 1434 Folio 466 be removed;
>
> 2. A declaration that any claim brought by the Defendant Charles Bromfield in relation to the contract dated 31st of August 2010 signed by the Applicant and the Respondent and allegedly breached on or about July 2013, be statute barred.

[4] In Claim No. SU2023CV00125 Bromfield is claiming:

> "…An equitable interest in premises located INDUSTRY PEN in the parishes of SAINT ANN and SAINT MARY being the Lot numbered THREE (SECTIONS ONE, TWO AND THREE) on the plan of part of Industry Pen being the land comprised in Certificate of title registered at

Volume 1434, Folio 466, arising from the significant investment made by the claimant in the establishment of a water park on the defendant's land with his consent.

He is seeking the following orders:

a) That the claimant is entitled a 50% equity in the premises located in INDUSTRY PEN in the parishes of SAINT ANN and SAINT MARY being lot numbered THREE (SECTIONS ONE, TWO AND THREE) on the plan of part of INDUSTRY PEN being the land comprised in Certificate of Title registered Volume 1434 Folio 466.

b) That the defendant shall transfer to the claimant 50% interest in the said land located at Industry Pen, in the Parish of Saint Ann within 30 days of the granting of this order, by way of adding the name of the claimant to the duplicate Certificate of Title registered at Volume 1434, Folio 466 as tenants in common in equal shares failing which the claimant shall lodge at the Office of Titles this Order of this Court for seemed to be endorsed on the original title.

c) That the cost to affect the transfer shall be shared equally between the parties.

d) That the Claimants attorney shall have conduct of this transaction.

e) That the property shall be valued by a reputable valuator agreed between the parties. In the event that the valuator cannot be agreed, the Registrar of the Supreme Court is authorized to appoint a valuator the cost of which shall be shared between the parties.

f) That the premises be sold and the defendant shall have first option to purchase. In the event that the defendant fails to exercise this option within 60 days of receipt of valuation the property shall be placed on the open market.

g) That the Registrar of the Supreme Court is empowered to sign any and all documents to make effective the orders of this Honourable Court if either party is unable or unwilling to do so.

h) Such further and other relief as this Honourable Court may deem just…"

[5] On May 3, 2023, Dansinghani filed a Notice of Application for Court Orders in Claim SU2023CV00125 in which he is the defendant. The application is for Summary Judgement made pursuant to the Civil Procedure Rules 2002 (CPR) Part 15. The grounds on which the application is based is that the Claimant has no real prospect of succeeding on his claim against the Defendant because the relationship

between the parties was governed by a joint venture agreement dated 31 August 2010, which does not create or cause any equitable interest to arise in the subject property.

[6] Subsequently, on June 30, 2023, in Claim No. SU2022CV04026, Dansinghani filed a Notice of Application seeking the following orders:

1. The First hearing of the Fixed Date Claim filed herein on 21 December 2022 be treated as the trial of this matter and the following order be made:

    a. Caveat Number 2378442 endorsed on the certificate of title registered at Volume 1434 Folio 466 be removed by the Registrar of Titles: and

    b. The costs of this application and costs of the claim to the Claimant.

[7] However, before either application could be heard the matters were consolidated on December 12, 2023. The matters, for want of a better word, remained in a hybrid state of Fixed Date Claim Form and Claim Form and Particulars of Claim.

[8] On May 16, 2024, when the applications came before me the matter remained in that state. At that time the Attorneys present agreed that one application would be determinative of the other. I proceeded to hear the application. The Ruling was fixed for July 30, 2024 but was adjourned to September 27, 2024. On that day Mr. Christie reminded the court that the Dansinghani's Notice of Application filed on June 30, 2023 was fixed for the date of ruling on July 30, 2024 which was subsequently adjourned to September 27, 2024.

[9] As a result of the consolidation, the court had before it, the Claim Form and Particulars of Claim, the Defence, an affidavit in Support of the Summary Judgement Application, the Fixed Date Claim Form, Affidavit in Support and the affidavit in response to the Fixed Date Claim.

[10] The Defendant seeks the following Orders:

1. *Summary Judgment in favour of the Defendant against the Claimant.*

2. *The Claimant's attorneys-at-law, Duncan Ellis & Co., be ordered to pay wasted costs to the Defendant in an amount to be taxed, if not agreed.*

3. *Additionally, and alternatively, the costs of this application be awarded to the Defendant against the Claimant in an amount to be taxed, if not agreed*.

[11] Agreed Facts

i. The parties entered into a joint venture agreement that was reduced in to writing and dated August 31, 2010.

ii. The subject property which is located in Industry Pen in the parishes of Saint Mary and Saint Ann is owned by the Defendant and was to be developed by the parties as a “Tropical Rain Forest Theme Park”

iii. The Claimant being a “highly experienced real estate developer” who had experience with similar projects was to lead the development which was to be for the benefit of the parties

iv. The scope of the work to be done was outlined and agreed.

v. The Claimant (Bromfield) expended time and money on the project.

vi. Further, it was agreed that a Company Rivva Riddim Limited would be formed with the Claimant and the Defendant owning 90% of the shares split evenly (45% each) and 2 others would own the remaining 10% evenly split between them (5% each).

vii. Rivva Riddim would then lease to own the subject property. The lease at a standard rate would continue until the subject property was purchased by the company.

viii. The purchase price was agreed to be the initial purchase price as paid for the subject property by the Defendant less the lease paid.

ix. The parties and others were to be reimbursed for the cost of the development as soon as the venture was able to do so.

x. Disputes between the parties were to be referred to the Dispute Resolution Foundation as the final arbiter.

xi. The Claimant was excluded and prevented from completing the project in 2013.

xii. The relationship between the parties broke down.

Bromfield's Case

[12] The Claimant's case is that, under a joint venture agreement, he invested over $60,000,000, his time and expertise into the project with the expectation that the development would benefit both himself and the Defendant. He claims that Rivva Riddim Limited, (RRL)a company in which both he and the Defendant each own 45%, would own the property and business venture, and that his investment would eventually be beneficial to him.

[13] Further, that based on this joint venture agreement coupled with the Defendant's representations he acted to his detriment in seeking to fulfil the joint venture agreement. Thus, he is claiming an equitable interest or lien of the subject property at Industry Pen.

[14] The Claimant further contends that ongoing negotiations aimed to settle issues between the parties, involving various offers of settlement. Despite intermittent pauses, these negotiations continued without ceasing. The Claimant decided to take action upon realizing that the Defendant was negotiating to sell the entirety of the subject property, which would leave him unprotected.

Dansinghani's Case

[15] The Defendant argues that the Claimant's claim is based on contract law and is thus statute-barred since more than six years have passed since any alleged

breach. He contends that the Claimant is attempting to bypass this limitation by making a claim in equity.

[16] The Defendant asserts that the breakdown of the relationship between himself and the Claimant was due to dissatisfaction with the quality of the Claimant's work on the project and his failure to secure necessary permits, which stalled the project and led to the Claimant's exclusion.

[17] The Defendant acknowledges that the Claimant spent money on the project, however he disputes the amount, asserting that the Claimant failed to document the expenses as required by the joint venture agreement. Therefore, the Defendant argues that the Claimant would only be able to claim $15,000,000.00 instead of the $60,000,000.00 claimed.

[18] The Defendant admits to the terms of the joint venture agreement, which included the expectation that Rivva Riddim Limited, in which each party owned 45% shares, would purchase the subject property. However, the Defendant denies that this agreement created any expectation of an equitable interest.

[19] Additionally, the Defendant acknowledges numerous settlement negotiations but states that the last proposal was made in December 2015.

Submissions

Defendant/ Applicant’s Submissions

[20] The Defendant submits that this case warrants summary judgment in favour of the Defendant because the claim relies entirely on the interpretation of the Joint Venture Agreement (JVA), and the principles of equity clearly do not support the Claimant's position under the terms of the JVA.

[21] Firstly, the Defendant asserts that he acquired the land before the JVA was signed, as evidenced by affidavit and the JVA recital stating that the Defendant purchased a forty-acre farm at Industry Pen. Therefore, the Claimant cannot claim any

equitable interest or trust in the Defendant's land. The JVA, informally prepared by the parties, does not indicate any intent for the Claimant to acquire an interest in the land. Instead, it specifies that both parties were to be reimbursed for their investments, treating capital injections as advances or loans rather than contributions conferring ownership or trust.

[22] Counsel of the Defendant sought to rely on The House of Lords' decision in **Cobbe v Yeoman's Row Management Limited** [2008] UKHL 55 highlighting that proprietary estoppel requires a complete contractual agreement for the joint venture, which is absent here. The JVA stipulates several contingencies, such as the necessity for RRL to negotiate a lease-to-purchase agreement and obtain sufficient capital, none of which have been met even ten years after the agreement. Hence, the Claimant's proprietary estoppel claim fails under **Yeoman's Row's** criteria.

[23] Regarding a possible constructive trust claim, **Yeoman's Row** also shows that it is untenable. The court does not intervene in property ownership without a contractually complete agreement indicating an intention to subject the property to a trust and grant a beneficial interest. Even with a complete contract, the remedy would be specific performance rather than equity or trust.

[24] Additionally, the JVA's termination clauses allow the Defendant to withdraw from the property arrangements, indicating no intention to bestow any ownership interest on the Claimant. The JVA also states that if arrangements fail, both parties would seek resolution from the Dispute Resolution Foundation, further negating any equitable interest intent.

[25] The Defendant also addresses the Claimant's expenditure on the land, which does not create an equitable interest. This is supported by **Halsbury's Laws of England** and **Yeoman's Row**, where significant time and money spent did not result in a constructive trust.

[26] The Claimant's reliance on the JVA's phrase "the benefit of both individuals as the main goal" is also misplaced. The JVA was drafted by laypersons, and terms are to be interpreted with their ordinary meanings. The word "benefit" cannot be equated to "beneficial interest" without further context. Case law such as **Re Sinclair's Life Policy** [1938] UKHC 31 shows that expressing an intention to benefit does not establish a trust. The term "benefit" aligns with the intention for financial gain or profit from the enterprise, not granting a beneficial interest in the land.

[27] The defendant concluded by submitting that the Claimant's claim for an equitable interest is unfounded. It was further argued that this claim, including the filing of a caveat, constitutes an abuse of process, as the Claimant's contract law claim is now statute-barred. The Defendant suggested that the Claimant's actions are intended to obstruct the Defendant's plan to sell the property and extract a settlement.

Claimant/Respondent's Submissions

[28] The Claimant submits that the Joint Venture Agreement (JVA) dated August 31, 2010, forms the basis of the claim, and its interpretation is crucial to resolving the contested issues. The JVA included a clause to incorporate a company called Rivva Riddim Limited (RRL) with the Claimant and the Defendant each holding 45% ownership. This company was intended to operate the facilities, and the Defendant was to transfer the property ownership to RRL as per the agreement.

[29] The Claimant asserts that he expended money and worked on the project, a fact acknowledged by the Defendant. However, the Defendant unilaterally breached the contract, offering various explanations in the defence. The parties had engaged in settlement negotiations, with disagreements mainly about the dates.

[30] The Claimant suggests that the Court must determine several key issues:

- whether the Defendant breached the JVA

- the remedies for such a breach
- if the Claimant acted to his detriment
- if the JVA required the Defendant to transfer the property to RRL; and
- if the Defendant's breach deprived the Claimant of an interest in the property through his 45% company stake. Additionally, the impact of ongoing negotiations on the limitation period must be considered.

[31] Citing Sinclair-Haynes J in **Allan Lye v Vernon** [2005] Supreme Court, Jamaica HCV 02246/2004, the Claimant argued that summary judgment is inappropriate due to significant factual disputes. They further submitted that the Defendant's reference to an article in the **Butterworths Journal of International Banking and Financial Law** is irrelevant, as it overlooks the agreement to transfer the property as a key contract component. Similarly, the Defendant's reliance on **Yeoman's Row** is misplaced. Unlike **Yeoman's Row**, where the joint venture was only at the planning stage and no formal agreement existed, the current case involves a written JVA with clear terms and conditions that both parties acted upon, including the formation of RRL and commencement of the Tropical Rainforest Theme Park development.

[32] Finally, the Claimant argued that the presence of substantial factual and legal issues necessitates adjudication for a just resolution.

The Law

Consolidation

[33] The court is empowered under Rule 26.1(2)(b) to consolidate proceedings. The effect of consolidation is that the claims are treated as one. More importantly all findings of fact bind all the consolidated parties. In **O. August Sherriah v DYC Fishing Co. Ltd etal** [2015] JMSC Civ 27, Sykes J (as he then was) stated:

> "Rule 26.1 (2) (b) of the Civil Procedure Rules (CPR) permits the court to consolidate proceeding. There is no definition of consolidation in the rules and it is prudent to use the definition that has been used over time. It is an expression that has been used in the law for over one hundred years. The usual meaning of this: different claims or causes of action are joined together and treated as if they were all one claim. One of the primary consequences of consolidation is that all findings of fact bind all the parties to the consolidated claim. The purpose of consolidation is to save time, costs and effort…"

[34] It is clear therefore that the claims having been consolidated are now one. A decision on facts binds everyone and every aspect of the consolidated claims. The Claims in their current state are however, two different creatures under the CPR that are not subject to the same rules. For example, rule 15.3 (c) states that summary judgment is not available in claims commenced by Fixed Date Form. That is the nature of the application before me. I will state from the inception that based on the state of these consolidated claims this is not the appropriate time to be considering a summary judgment application or for that matter an application to treat the First Hearing as a Trial. Nevertheless, I will consider the requirements of a summary judgment application.

Summary Judgment

[35] Rule 15.2 (a) of the **CPR** governs the approach of the court to applications for summary judgment. It states that;

> "The court may give summary judgment on the claim or on a particular issue if it considers that –
>
> a. the claimant has no real prospect of succeeding on the claim or the issue; or
>
> b. the defendant has no real prospect of successfully defending the claim or the issue.

[36] (Rule 26.3 gives the court power to strike out the whole or part of statement of case if it discloses no reasonable ground for bringing or defending the claim.)"

[37] Rule 15.5 provides that an application for summary judgment must be supported by affidavit evidence, and the respondent must also file affidavit evidence on which he intends to rely.

[38] Rule 15.6(1) outlines the court's powers in granting summary judgment: - 15.6 (1) On hearing an application for summary judgment the court may –

(a) give summary judgment on any issue of fact or law whether or not such judgment will bring the proceedings to an end;

(b) strike out or dismiss the claim in whole or in part;

(c) dismiss the application;

(d) make a conditional order; or

(e) make such other order as may seem fit.

[39] The often quoted authority of **Swain v Hillman** [2001] All ER 91 on summary judgment is still applicable today. At paragraph j, Woolf MR states inter alia:

> "It enables the court to dispose summarily of both claims or defences which have no real prospect of being successful. The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or, as Mr Bidder QC submits, they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success."

[40] This case of **Gordon Stewart et al v Merrick Samuels SCCA No. 2/2005** is also instructive. At page 94, Harrison J.A. stated:

> "The prime test being 'no real prospect of success' requires that the learned trial judge to do an assessment of the party's case to determine its probable ultimate success or failure. Hence it must be a real prospect not a 'fanciful one'. The judge's focus is therefore in effect directed to the ultimate result of the action as distinct from the initial contention of each party. 'Real prospect of success' is a straightforward term that needs no refinement of meaning."

[41] There is also no burden of proof on the claimant/respondent in these kinds of applications, it rests solely on the applicant. As noted by Jackson Haisley J in **Easton Lozane v Junior Beckford** [2020] JMSC Civ.106 (paragraph 18):

> "It is noteworthy to state here, that, the burden of proof upon an application for summary judgment rests with the applicant, to adduce sufficient evidence, that the Respondent's Defence has no realistic prospect of success, if it were to proceed to trial. To have a real prospect of success, a case has to carry some degree of conviction and has to be stronger than merely arguable as seen in the case of Bee v Jensen [2007] RTR 9."

[42] In **Allan Lyle v Vernon Lyle [2005]** Sinclair-Haynes J (as she was then) on page 8 enunciated the following:

> "An application for summary judgement is, however, inappropriate where there are important disputes of facts. On an application for summary judgement, the applicant must satisfy the court of the following:
>
> 1. All substantial facts relevant to the claimant's case which are reasonably capable of being before the court must be before the court.
>
> 2. Those facts must be undisputed or there must be no reasonable prospects of successfully disputing them.
>
> 3. There must be no real prospect of oral evidence affecting the court's assessment of the facts. " [**See S v Gloucestershire County Council and L v Tower Hamlets London Borough Council** (2000) The Independent 24th March (C.A.)]

[43] In **Sagicor Bank Jamaica Limited v Taylor-Wright** [2018] UKPC 12 PC Appeal No 0011 of 2017, Lord Briggs stated at paragraph 21:

> "The Board considers it axiomatic that, if a pleaded claim is met with a defence (whether pleaded or deployed in evidence) on a summary judgment application which, if true, would still entitle the claimant to the relief sought, then generally there cannot be a need for a trial. If the pleaded claim

> justifies granting the relief sought then, if the claimant proves that claim, it will succeed. If the alleged defence also justifies the relief sought, then the claimant will succeed even though the defendant proves the facts alleged in her defence. In either case, the defendant will have no real prospect of successfully defending the claim, within the meaning of Part 15.2(b)."

[44] Although case law has somewhat cemented the requirements to be considered when hearing an application for summary judgment, in **Doncaster Pharmaceuticals Group Ltd & Ors v The Bolton Pharmaceutical Company** 100 Ltd [2006] EWCA Civ 661 the court cautioned that the application of procedural justice should be kept in the proper perspective as a court could experience more difficulty in applying the test of "no real prospect of success" to an application for summary judgment than in trying the case. At paragraph 5 of the judgment, Mummery LJ stated that a trial judge:

> "5. …will usually have a better grasp of the case as a whole, because of the added benefits of hearing the evidence tested, of receiving more developed submissions and of having more time in which to digest and reflect on the materials."

[45] He went on to explain that where there are conflicts of facts on the relevant issues and even when there is no obvious conflict in circumstances where the court finds that there are reasonable grounds for making a more substantial probe into the facts of the case that would influence the outcome of the case, a court should exercise caution in granting a summary judgment application.

[46] It can now almost be said that it is trite law that in considering an application for summary judgment the court must not conduct a mini trial. This is what Mummery LJ was cautioning the courts about in **Doncaster Pharmaceuticals.** At paragraph 17 he continued:

> "17. It is well settled by the authorities that the court should exercise caution in granting summary judgment in certain kinds of case. The

> classic instance is where there are conflicts of fact on relevant issues, which have to be resolved before a judgment can be given (see Civil Procedure Vol 1 24.2.5). A mini-trial on the facts conducted under CPR Part 24 without having gone through normal pre-trial procedures must be avoided, as it runs a real risk of producing summary injustice".

[47] On my analysis of the cases, it is the Applicant who must prove that the Respondent's case has no real prospect of success. The applicant in an application for Summary Judgment, must satisfy the court that the Respondent's case has no substance/merit. The Respondent in turn must demonstrate that their case is more than just arguable and that they have a good prospect of succeeding. In order to do this the court must examine the case brought by the parties. However, caution should be used when there are conflicts in the facts which must be first resolved before judgment is handed down. In applications of this nature the court should examine the Claim Form, Particulars of Claim, the Defence and any documents being relied on by each party along with the affidavits filed in support of and in response to the application.

Proprietary Estoppel

[48] Proprietary estoppel arises where one party is led to believe they will have an interest in property and acts to their detriment in reliance on that belief. The case of **Thorner v Major** [2009] UKHL 18 confirms that proprietary estoppel can arise where a landowner makes representations or gives assurances leading the other party to believe they will acquire rights in the land, and the other party relies on this to their detriment.

[49] In **Wills v Wills** [2003] UKPC 84 the Privy Council held that where a party has acted to their detriment based on a belief that they would acquire an interest in property, the court may impose a constructive trust or uphold a claim of proprietary estoppel.

[50] The interest to be acquired was more specifically discussed in the case of **Taylor's Fashions Ltd v Liverpool Victoria Trustees Co. Ltd** [1982] QB 133, a case discussed in **Yeoman's Row.** Oliver J at page 144 explained what "a certain interest" in land means:

> "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."

[51] In Taylor's **Fashions** the "certain interest" that was expected was an option to renew the lease. The court found that there was no lack of certainty as the terms were spelt out. The expectation was that when the option to renew the lease was exercised it would be granted.

Constructive Trusts

[52] At paragraph 114 of **Halsbury's Laws of England,** 2019, Volume 98, the learned authors stated that:

> "A constructive trust attaches by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust but which is held by a person in circumstances where it would be inequitable to allow him to assert full beneficial ownership of the property."

[53] According to Halsbury, constructive trusts are automatically imposed in situations where it would be unconscionable or against equitable principles for the legal owner to retain the property solely for their own benefit. These trusts are not dependent on the intentions of the parties involved but are imposed to prevent unfairness in circumstances where a person has acted to their detriment based on an agreement or certain utterances by the title holder.

[54] In the case of **Lloyds Bank Plc. v Rosset and Another** [1991] 1 AC 107, page 132 paragraphs F- G and pages 132 paragraph G to page 133 paragraph A, Lord Bridge of Harwich provided further clarification that a constructive trust can arise where there is ether an express agreement or understanding that the parties will share the property, or where one party acts to their detriment based on the expectation that they will share in the property. He stated that for such an agreement to be found, there needs to be "evidence of express discussions between the partners", even if the details of those discussions are not perfectly remembered or precise.

[55] Once an agreement is established, the party asserting a claim to a beneficial interest against the legal owner of the property must demonstrate that they have acted to their detriment or significantly changed their position in reliance on the agreement. This is necessary to give rise to a constructive trust or proprietary estoppel, which would protect their beneficial interest.

[56] Lord Bridge further explained that in cases where there is no evidence supporting an agreement or arrangement to share the property, the Court must rely solely on the conduct of the parties to infer a common intention to share the property beneficially. In such situations, direct contributions made by the non-legal owner towards the purchase price, including mortgage payments, can readily support the inference needed to establish a constructive trust. Lord Bridge's statements was geared towards addressing the question of the common intention of the parties regarding their beneficial interests in the property.

[57] More recently the House of Lords decision in **Stack v Dowden** [2007] UKHL 17, has demonstrated that in light of the social and economic changes it has become necessary in determining the beneficial interest in property to ascertain the shared intention of the parties. This intention may be inferred from the whole course of conduct of the parties in relation to the property. However, caution must be exercised when applying this principle to commercial cases as **Stack v Dowden** was decided in the context of a cohabiting couple. In that case Lady Hale also

acknowledged that what may seem fair in the outcome of a commercial case may be deemed unjust in a marriage or a cohabiting couple. This is because in commercial matters the focus is on financial contributions and any contracts that may have been entered into by the parties.

Discussion

[58] The parties agree that they entered into a joint venture agreement in 2010. It is also agreed that Dansinghani owned the land while Bromfield provided the funds to develop the property. In my view the issues of proprietary estoppel and constructive trust arise.

Proprietary Estoppel

[59] Based on the guidance from the cases above, in particular **Taylor's Fashions,** I am of the view that in the case at bar, contrary to counsel for the applicant's submissions, there was no ambiguity in the terms of the joint venture agreement which house the lease to purchase clause as there was in **Taylor's Fashions.** The joint venture agreement can also be distinguished from the agreement in **Yeoman's Row**, as in that case Cobbe had no expectation to gain an interest in land after he acquired the planning permission. What he expected was for himself and Mrs. Lisle-Mainwaring to work out and confirm the terms to be included in the formal agreement. In the case at bar a formal agreement already existed. All things being equal had the agreement not been breached there is no reason presented why the company, which was in fact formed, would not have leased the land and eventually purchased it. It can therefore be argued that because of the agreement Bromfield acted to his detriment. He spent millions developing the property as set out in the Particulars of Claim and Affidavit with no objection from Dansinghani with the expectation that the joint venture would proceed as agreed. Dansinghani, if the principles are applied, would be estopped from denying Bromfield's interest in the property.

Constructive Trust

[60] In applying the law in relation to constructive trusts to joint ventures. If there is a clear understanding that the party developing the land would have a share in the property, as a result of which they acted to their detriment by investing significant sums of money, the court may find that the landowner holds the property on a constructive trust for the other party.

[61] In **Yeomans's Row** the court considered two scenarios in which the court held that a constructive trust may exist. (1) where the acquisition of land formed part of the joint venture agreement as in the cases of **Banner Homes Group Plc. V Luff Developments Limited.** [2005] Ch. 372, **Holiday Inns v Broadbent** and **Pallant v Morgan** [1952] Ch. 43 and (2) where the land was purchased prior to the joint venture agreement, but a contractually complete agreement for the joint venture was entered into as in the case at bar.

[62] The joint venture agreement stated that by signing the agreement the parties would develop the White River property as a Tropical Rain Forest Theme Park "to the benefit of both parties as the main goal." The agreement went on to specify the terms of the lease for purchase of the land by the company Rivva Riddims. This case is therefore entirely distinguishable from **Yeoman's Row**. The agreement had been formalised and completed, a signed document existed outlining all the terms and expectations of the parties. No terms were left to be agreed.

[63] The case at bar is also distinguishable from **Re Sinclair's Life** which the applicant relied on to support his submission that the expression of a benefit is different from conferring a beneficial interest. In **Re Sinclair's Life**, Mr. Sinclair took out an insurance policy on his life on behalf of his infant godson, Hervey Cecil, Rowan Hopwood. Upon his death monies became payable under the policy of life insurance. The claim was taken out on behalf of the infant by his father and next friend against the executors of the estate of Mr. Sinclair claiming that in effect Mr. Sinclair had declared himself a trustee of the policy monies, if and when he

received them, for the infant, and that the infant is therefore entitled to claim as against the legal personal representatives of Mr. Sinclair, that they hold the money on trust for the infant. However, Farwell J found that the circumstances of the case were not sufficient to enable him to agree or find that any such trust had been proved. Although the learned judge was of the view that Mr. Sinclair was desirous of making some provision for his godson, he considered it a stretch, based on the evidence, to say that by so doing he made himself trustee of the monies payable under the policy. In the case at bar it was the express intention of the parties that Bromfield would benefit under the JVA. The terms and the type of benefit were also stated in the JVA

[64] Counsel has submitted that it was the company Rivva Riddims that was to benefit and not Bromfield but in my view that is an argument based on six of one and half a dozen of the other as it is agreed that Bromfield was to have a 45% interest in the company. It is also disingenuous to argue that since Rivva Riddim did not pay for the land it is not possible for Bromfield to gain an interest, in circumstances where it is being alleged that Dansinghani breached the agreement therefore ensuring that the terms could not be fulfilled. Furthermore, even where one party pays for the land, the court will look beyond that to determine the true intentions of the parties based on the whole course of their conduct concerning the land.

[65] On the affidavits currently before the court, it could be said that the only person who has thus far benefited from the joint venture is Dansinghani. Bromfield invested a considerable sum of money in the project. He did so because he was of the belief, based on the agreement, that he would enjoy some benefit. That benefit was twofold: First, the company River Riddim would be formed in which he and Dansinghani would have the majority interest being 45% each with 5% going to Rose Duncan Ellis and another 5% to Georg Bromfield. The company would then lease to purchase the land owned by Dansinghani. Secondly, it was expected that he would be reimbursed for the cost of the development from the operation of the business. Neither of these were realized.

[66] It is to be noted that in order to successfully rely on the principle of Proprietary Estoppel it necessary to prove that upon completion of his end of the agreement Bromfield had the expectation that he would become entitled to "a certain interest" in the land. That is certainly his case. In his defence filed on May 2, 2023 Dansinghani admitted that the parties had discussed him transferring the property to Rivva Riddim Limited in good faith after construction began. This again did not materialise because of an issue on Dansinghani's side.

[67] I bear in mind that questions have arisen regarding the interpretation of the joint venture agreement. For example, the claimant does not accept that the joint venture agreement was inconclusive because the outcome was based on contingencies. I am of the view that it is not my purpose at this juncture to analyse and interpret the joint venture agreement when I have not been exposed to all the material likely to be filed in this matter or to any oral evidence. That I believe is the purview of a trial judge.

[68] In applying **Bolton Pharmaceutical** and **Allan Lyle** it could be argued that there are substantial disputes of facts, the parties are in dispute in relation to the settlement discussions that they were engaged in and the time that they had the settlement discussions. They are in dispute in relation to who terminated the joint venture agreement. They are in dispute about the extent of the sums expended by Bromfield to develop the property. The parties are in dispute about the sum of $16,000,00.00 which Dangsinghani asserts is owed to him by Bromfield from the sale of another property. Dansinghani went as far as to suggest that if that money was used in the development, it would have adequately compensated Bromfield for the expected expenditure on the project of $15,000,000.00.

[69] It cannot be disputed that the joint venture agreement was severed in a rather untidy fashion. The parties clearly dispute several facts surrounding the joint venture, including its interpretation. In addition, this case involves a large sum of money allegedly expended by Bromfield. Dansinghani has stated that he also spent large sums of money on the project. Despite all this I must bear in mind that

this is a summary judgment application on a hybrid claim because the matters were consolidated. It is therefore not appropriate in my view for the Court to be proceeding on one application that should be heard on a matter commenced by Claim Form and Particulars of Claim when a part of the case now involves a claim commenced by Fixed Date Claim Form and affidavit. The Claim is now one and a decision must first be made as to the way forward. I am of the view that this is not a matter fit for a summary judgment application at this time. In hindsight, the application ought not to have been heard at all. The matter should be fixed for Case Management Conference and the claim regularized.

[70] In the circumstances, I decline to make a decision in Notice of Application for Court Orders filed on May 3, 2023.

[71] As I indicated at the beginning of this ruling the application for the First Hearing to be treated as the trial of the Claim was fixed for the date of the Ruling. Based on the stance of this court I see no reason to fix yet another date for that application to be heard for the reasons stated above.

[72] Leave to appeal is denied.

[73] Costs to be costs in the claim.

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Opal Smith
Puisne Judge (Ag)