



[2017] JMSC Civ. 207

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. 2013 HCV 02408**

<b>BETWEEN</b>	<b>BLANDFORD TAYLOR</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>MARIE FALCONER JEFFERS</b>	<b>DEFENDANT</b>

**IN OPEN COURT**

Janet Taylor and Mikhail Williams instructed by Taylor, Deacon & James for the Claimant  
Janene Laing Attorney at Law for the Defendant

Heard: 4<sup>th</sup> – 5<sup>th</sup> May, 2017 Delivered: 13<sup>th</sup> December, 2017

**Estoppel – Elements of Proprietary Estoppel – Evaluation of Credibility – How to treat with issues of fact in estoppel – Family Dispute as to beneficial ownership of land – Claimant's entitlement to property based on contribution.**

**BERTRAM LINTON, J**

**BACKGROUND**

- [1] Blandford Taylor has brought this action seeking a declaration that he is the beneficial owner of a quarter acre of land and a house located at Queensbury District, Southfield, Saint Elizabeth (hereinafter called disputed property) and which is presently owned by Marie Jeffers, his niece.
- [2] The disputed property was part and parcel of lands owned by Harold Taylor; father of the claimant and grandfather of the defendant. Harold Taylor left his interest in the entire Queensbury property to be divided equally among his five children, three

of which are known to the court Blandford, Leita and Maxine. Maxine, who is now deceased, is the mother of the defendant and was the sibling who acquired the interest in the disputed property. Mrs. Jeffers inherited her mother's interest and was able to begin construction of a house on the property. She acquired a '*build on own land*' loan from the National Housing Trust to the tune of \$800,000.00 in 1996.

- [3] In 2003, the loan fell into arrears and it is alleged that the loan was serviced by the claimant and/or his sister Leita Taylor after some discussion. At some point, Mr Taylor began making payments towards the monthly instalments for the loan and moved into the house. In 2013, the loan was paid off when Mrs. Jeffers made a lump sum payment to close the account.
- [4] Mr Taylor has said that in 2004, he visited Jamaica and realized that the house needed improvements, so made note of the work needed and began renovation efforts. These renovations amounted to some \$2,500,000.00. After they were completed, Mr Taylor and his wife says they moved into the disputed property and have been living there up to the time this claim was filed.
- [5] In 2013, Mrs Jeffers, through her Attorneys at Law, wrote to Mr Taylor giving him notice to quit and deliver up possession of the land in twelve months. This letter also outlined that he was now required to pay rent in the sum of \$15,000.00 per month for this twelve-month period.
- [6] Mr Taylor has now brought this claim seeking a declaration that he is the beneficial owner of the disputed land and that the defendant be ordered to take steps to transfer ownership of the property to him. In the alternative, he has asked that the court grant himself and his wife a life interest in the property in order to acknowledge his substantial contribution and to give credence to the verbal arrangements that the defendant had made with him.

#### **Case for the Claimant**

- [7] Mr. Taylor says that he was contacted by the defendant and his sisters when her loan fell into arrears and discussion were had as to how the property would remain within the family. He says that it was agreed that he would pay the arrears, meet the monthly instalments for the mortgage and then the defendant would transfer her interest in the property to him. In exchange, he says she would have assumed his interest in the family property which was a vacant quarter acre of land.
- [8] Mr Taylor further says that in 2004 when he visited Jamaica, the disputed property was vacant as no one was living there. He noted that the house needed significant work and so made the renovations which were necessary to make it liveable. Later, when he retired, he and his wife began living in the property.
- [9] In 2013, he says that he became aware that the mortgage sums were paid up by Mrs Jeffers. He was served with a letter from Mrs Jeffers' attorney to say that he would need to leave the house within twelve months and in that time pay rent of 15,000.00 per month.
- [10] He contends that this is unfair for Mrs Jeffers to now renege on her promise and has asked the court to stop her from doing so based on the principle of proprietary estoppel.

#### **Case for the Defendant**

- [11] The defendant contends that she did not promise Mr Taylor any interest in her property. She says that when the mortgage fell into arrears, she contacted her aunt Leita Taylor for assistance. Later, she found out that Mr Taylor was living at her house in 2010 and so, she insisted that he pay the mortgage instalments. Again she insists that she did not promise her uncle any interest in her land nor did she tell him that they would exchange pieces of the family property.
- [12] Mrs Jeffers further says that the improvements that were done to her house by Mr Taylor were cosmetic at best. She does not agree that her house was run down and needed the extensive work that Mr Taylor says he did to it. As such she

contends that the work done was cosmetic interior decorations and were for his own comfort but she did not know about them neither did she authorize them.

## SUBMISSIONS

### A. *The Claimant's Submissions*

#### (1) Evaluation of the claimant and defendant's evidence

##### (a) *The Claimant's Evidence*

[13] Counsel for the Claimant has asked the court to find that Mr. Blandford Taylor is a witness of truth. It was submitted that Mr. Taylor's evidence, even in cross examination, was clear, unambiguous and convincing.

[14] Mr. Taylor admitted to the fact that he has a partial interest in property in England in which his daughter now resides. He further said that the defendant along with Leita and Maxine contacted him and told him about the arrears and he agreed to assist with the arrears, pay the mortgage and in return the defendant would give him the house and land she presently owns and take his quarter acre of the family property. It is based on this agreement that in 2004, he made several major improvements to the house to include:

- a. Changed two doors;
- b. Installed seven windows;
- c. Tiled the whole house;
- d. Fixed the plumbing in the kitchen;
- e. Installed walk-in wardrobes in both bedrooms;
- f. Fixed the leaking ceiling;
- g. Repainted the whole house; and

h. Installed electricity.

- [15] Counsel asked the court to accept the claimant as a credible witness because he was able to recite the telephone number of the defendant and was able to recall that she called "*in the evening time.*" He was also candid about the fact that he was not able to produce the receipts for all the alteration because he "*didn't know it would come to this.*" He admitted to the fact that he helped to pay property tax for the whole family property but he paid none towards the defendant's piece because he was not aware that it was "*cut off*" from the rest of land until fairly recently.
- [16] Finally, it was submitted that the claimant was not able to respond properly to some of the arguments put forward by the defendant because the defendant did not properly disclose all of her defence. However, it was submitted that the claimant's truthfulness could be assessed based on his answers to all the surprise information presented by the defendant.

(b) *The Defendant's Evidence*

- [17] The claimant submitted that the court should be minded to accord the appropriate weight to the defendant's viva voce evidence since she was able to go beyond the scope of her pleadings. It was said that the defendant's version of events in some instances were convenient stories; made up to counter the claimant's evidence. In this regard, the court is being asked to disregard the following information because it was not outlined in her pleadings:
- i. The defendant says that her brother who has since migrated, lived in the property from 1999 – 2004. To solidify this point, the claimant submitted that the defendant could have had her brother give evidence via video link so as to prove this point. The fact that she did not is to be considered as "*telling*" in the circumstances.

ii. The defendant claims that it was her step father, Mr. Ervin Steadman who was responsible for the improvements to the house- It was contended that Mr Steadman now resides in Jamaica and could have been brought to give evidence on the defendant's behalf especially since the issue of the improvements was a live issue in dispute on the claimant's case.

[18] It was further submitted that the defendant's evidence was inconsistent in several instances. Further, when the defendant moved to Nevis in 1999 she received a salary of \$15,000.00 and this would not have been sufficient to make all of \$3,000,000.00 worth of improvements to the house. It was also noted that at one point she said she was unemployed in Nevis and so could not afford the improvements she said she made to the house over time. It was challenged that the defendant did not visit Jamaica every year as she said, since nothing in her pleadings indicated this nor does her witness statement or summary speak to this at all.

[19] The court has been asked to note that the defendant admitted that in 2010 she told the claimant to pay the mortgage in order to stay in the property. Counsel contended that the court ought to impute a promise or an assurance between the parties. As such, the 2010 agreement was a renewal on the 2004 promise to hand over the property after the claimant performed his part of the agreement.

[20] In all, the claimant has argued that the defendant's evidence ought not to be accepted as the truth.

(2) The Law of Proprietary Estoppel

[21] It was submitted that the case of ***Tewani Limited v Tikal Limited (trading as Super Plus Food Stores)*** [2016] JMCC Comm 8, outlined the element of proprietary estoppel. As such, the court has been asked to consider the elements; that:

- a. An assurance/ representation by a landowner that he will not insist on his strict legal right either by words, actions or both was made;
  - b. There is evidence of reliance this assurance/ representation; and
  - c. The assured sustained some detriment or disadvantage based on his reliance on the assurance/ representation made.
- [22] Based on the requirements outlined in **Tewani**, the claimant said that a clear promise was made between the parties because the defendant clearly knew about the improvements being done to the property and did not object. She clearly knew that Mr Taylor was making the mortgage payments so as to gain an interest in the property as agreed. Further, it was submitted that the evidence of reliance on the promise is seen in all the improvements done to the property by Mr Taylor. As such, Mr Taylor has suffered a detriment as he used his retirement funds to improve this property because he believed that he would have received an interest. Therefore, he contended as a retiree he has no income to now build a retirement home.
- (3) Non-disclosure on Defence
- [23] Counsel for the claimant argued that the defendant has engaged in ‘*trial by ambush*’ because much of their defence was not pleaded in accordance with the Civil Procedure Rules (hereinafter called CPR). He pointed to the fact that the CPR was implemented so as to govern civil cases and manage them in such a way that fairness and equality are at the forefront of the court’s consideration. Reliance was placed on the case of **Janet Edwards v Jamaica Beverages Limited** claim number C.L 2002/E-037 delivered 23<sup>rd</sup> March, 2010 to buttress this point as the case demonstrated the court’s recognition that litigation is now conducted with “*all-cards-faced-up-on-the-table*.”
- [24] He further argued that Part 28 requires each party to disclose documents that are directly relevant to the case. As such, the documents which were shown to the

claimant in cross examination cannot be relied on by the defendant. It was contended that the fact that the documents shown to claimant were not listed in the defendant's list of documents, is evidence of non-disclosure.

- [25] The claimant contended that the defendant was allowed to give viva voce evidence in examination in chief which enabled her to give evidence in relation to documents that were not disclosed and go beyond her expressed defence as outlined in her pleadings. It was said that the mention of these documents would have been prejudicial to the claimant and the fact that she was now giving new evidence, took him by surprise. Therefore, he would not have been adequately prepared to respond to these new revelations. This non-disclosure would be sufficiently serious to warrant the court to exercise its discretion in favour of the claimant and strike out the defendant's case.

B. *The Defendant's Submissions*

(1) Evidence of the Claimant

- [26] The defendant's first contention is that the claimant made an agreement with his sister Leita Taylor and not with Mrs. Jeffers. As such, Counsel argued that Mr Taylor could not now seek to enforce neither in law nor equity a promise that did not involve her client to begin with. To support her argument, she pointed to aspects of Mr Taylor's evidence which indicated that he relied on Leita for several of the finer pieces of the alleged promise.
- [27] Further, the defendant has asked the court to consider that the agreement made was very uncertain and therefore cannot be relied upon. To this end, it was submitted that Mr Taylor in his evidence expressed a number of instances when he says that he and Leita had a certain understanding that particular things would be done. It is against this background that she has asked the court to consider whether the defendant was also of the same understanding. She said that the defendant has relied on Leita's involvement in the transaction because he knew

that she was aware of the circumstances surrounding the disputed property and the mortgage payment issues.

- [28] The defendant also contended that no receipts were tendered into evidence showing that the claimant made any payments to the mortgage arrears or met the monthly instalment between 2004-2013. It was noted that the defendant gave Leita permission to make payments on her behalf but not Mr Taylor.
- [29] Further discrepancies were made apparent on the claimant's case. These include:
- a. The claimant's pleadings note that he made repairs to the house in 2004 while in cross examination he said that it was in 2003 that the repairs were done.
  - b. No documentary evidence was proposed to show that improvements were indeed done on the house by him.
  - c. In his own viva voce evidence he admits to spending approximately \$967,000.00 on the property while he claimed in his witness statement that he spent over \$2,500,000.00.
  - d. He also says that the defendant was in constant contact with Leita and so she knew of the improvements that were being done to the property. It was submitted that since the agreement was between the claimant and the defendant it would have suited the claimant for direct contact to be made as between them in relation to the improvements.
  - e. In his witness statement he said that Leita was the person who went to the NHT office in 2013 and discovered that Mrs. Jeffers had paid up the closing balance while in this oral evidence he said that his wife was the person who made this discovery.
- [30] The court has been asked to consider that the claimant made a failed attempt to secure lands in Jamaica prior to this transaction. He also sought to repair his

parent's house but this effort proved futile because though he sent the monies, the work was never done. After failing to settle his retirement in Jamaica, the defendant submits that it was easy for him to simply settle in the defendant's house rather than seek to build a house of his own at this stage.

- [31] It was submitted that if the court were to consider the claimant's case as against the requirements of the law, it would find that he has not met the requirements to show that proprietary estoppel should be invoked. This was so as the defendant said that there was no common intention to create a promise. There is no evidence of reliance on this promise nor can it be said that the claimant suffered a detriment as he had the benefit of occupation for an extensive period.
- [32] The defendant has said that if the court were to find that the claimant did work on the property, it ought to consider the changes more decorative or as minor repairs. In this regard, counsel relied on ***Stack v Dowden [2007] UKHL 17***, to demonstrate that the claimant's alleged improvements, if any, would not be sufficient to impute a presumption that he indeed had an equitable interest.

(2) Evidence of the Defendant

- [33] Counsel for the defendant has said her client's evidence was consistent. She admitted that she was paying the NHT mortgage instalments from the time the loan was acquired in 1996 to 2003 when it fell in arrears. She says she reached out to her aunt Leita who assisted her with the payment on the arrears.
- [34] She maintained that she became aware of the claimant living in the property in 2010 and that she told her mother and aunt that she was upset about the new state of affairs. In any event, she indicated that Mr Taylor would have to pay the mortgage instalments if he were to remain and that he could stay at the house until he found somewhere to live.
- [35] The defendant submitted that it would not have been logical for her to seek Mr Taylor's assistance because she did not know him nor did they share a

relationship. Further, she would not have sought to exchange her own property with a house on it for Mr Taylor's property that had no house.

- [36] Based on all the arguments presented, the court was asked to find in favour of the defendant as the claimant has not made out his case.

## THE ISSUES

- [37] The issues for the court's consideration are:

- a. Did the defendant promise the claimant that she would give him her interest in the disputed property on condition that he pay the mortgage arrears and complete the mortgage payments;
- b. Is there evidence to show that the claimant relied on the promise made; and
- c. If so can it be said that the defendant has suffered a detriment based on the promise.

## THE LAW

- [38] The law is clear "*he who asserts must prove.*" It is for the claimant to prove his case and show that he has the interest in the disputed property. And that this was as a result of the promise from the defendant on which he relied.

- [39] As it relates to proprietary estoppel, the law has three requirements which must be proven before the court can uphold such a cause of action. In the Court of Appeal case of **Annie Lopez v Dawkins Brown and Glen Brown [2015]** JMCA Civ. 6, Morrison JA said that:

*"Although proprietary estoppel is not based on contract, it is therefore always necessary to have regard to the nature and terms of any agreement between the parties. In the absence of agreement, the important starting point must be, firstly, whether there has been a representation (or assurance) by the landowner, capable of giving rise to an expectation that is not speculative, that she will not insist on her strict legal rights. Secondly, there must be evidence of reliance on the representation (or change of position on the strength of it) by the person claiming the equity. And, thirdly, some resultant detriment (or disadvantage) to that person arising from the unconscionable withdrawal of the representation by the landowner"*

*must be shown. But unconscionability, standing by itself, without the precedent elements of an estoppel, will not give rise to a cause of action."*

- [40] Therefore, the three requirements are, as set out by the authors of Gray & Gray (at para. 9.2.8), that:

*"A successful claim of proprietary estoppel thus depends, in some form or other, on the demonstration of three elements:*

- representation (or an 'assurance' of rights)
- reliance (or a 'change of position') and
- unconscionable disadvantage (or 'detriment').

- [41] In the case of **Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd [1982]** QB 133, Oliver J said that:

*"...the more recent cases indicate, in my judgment, that the application of the Ramsden v Dyson principle (whether you call it proprietary estoppel, estoppel by acquiescence or estoppel by encouragement is really immaterial) requires a very much broader approach which is directed to ascertaining whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment rather than to inquiring whether the circumstances can be fitted within the confines of some preconceived formula serving as a universal yardstick for every form of unconscionable behaviour.*

- [42] It was noted in the case of **Yeoman's Row Management Ltd and another v Cobbe [2006]** 1 WLR 2964, Lord Scott noted that:

*"My Lords, unconscionability of conduct may well lead to a remedy but, in my opinion, proprietary estoppel cannot be the route to it unless the ingredients for a proprietary estoppel are present. These ingredients should include, in principle, a proprietary claim made by a claimant and an answer to that claim based on some fact, or some point of mixed fact and law, that the person against whom the claim is made can be estopped from asserting. To treat a 'proprietary estoppel equity' as requiring neither a proprietary claim by the claimant nor an estoppel against the defendant but simply unconscionable behaviour is, in my respectful opinion, a recipe for confusion.*

*...Proprietary estoppel requires, in my opinion, clarity as to what it is that the object of the estoppel is to be estopped from denying, or asserting, and clarity as to the interest in the property in question that that denial, or assertion, would otherwise defeat. If these requirements are not recognised, proprietary estoppel will lose contact with its roots and risk becoming unprincipled and therefore unpredictable, if it has not already become so."*

- [43] In that regard, the court must consider the facts of this case in order to make a determination.

## ANALYSIS

- [44] I have given careful thought to all the submissions presented and all the arguments and case law as cited, I have no intention of reiterating them here in detail but will refer to them as is necessary to explain my reasoning and decision in this matter. I will analyse each legal issue in turn as well as examine and make findings on issues of fact which are important to the outcome of this case. Much of the findings of fact will be determined based on the credibility of the witnesses who gave evidence.

### (1) The Representation/ Promise/ Agreement

- [45] The issues of fact which will determine whether a promise was reached as between the parties to this claim are:
- a. Whether conversations were had between the claimant and defendant about the future of the disputed property; or
  - b. Were the agreements reached by the claimant and his sisters; and
  - c. What impact would either result have on the outcome.

- [46] One of the most important aspects of determining whether a representation was made to the claimant is analysing the conduct between parties. It is clear based on the evidence that Mr Taylor and Mrs Jeffers do not agree on this issue. It is the claimant's contention that in 2003 when the mortgage fell into arrears, Mrs Jeffers contacted him for help and it was agreed that he and Leita would assist. Particularly, he says it was understood that he would pay off the arrears, continue to meet the monthly instalments and then the defendant would give him the property. Instead, she would occupy his quarter share of the family land which is now vacant. On the other hand, the defendant says that she was not a part of this

agreement and explicitly states that she does not know of any agreement where her uncle would clear the arrears, meet the monthly instalments and then receive her property. It is upon this basis that I have examined the actions of the parties to see whether it can be said that they indeed had some form of understanding or agreement.

- [47] Much of the claimant's assurances involved his sister Leita who sadly is not able to testify on his behalf in any event. I found it curious that there is little that took place between the parties that did not include Leita and this raises the question - was the agreement made by Leita in the first place. Unfortunately, there is not enough evidence to make a finding and the court will therefore not speculate. What is more important is irrespective of whether Leita crafted this arrangement, were the parties on the same page.
- [48] Based on the evidence presented, the defendant's conduct was examined closely. If the defendant had indeed agreed to the claimant's alleged promise, it is curious that she didn't give him written permission to make payments on her loan. It appears that Leita was closer to the transaction because both parties agree that she was working in the United States at the time this particular problem arose and was the common factor. So, why not then give the claimant written permission rather than give it to Leita, since he was to clear the arrears, continue to make the instalments and eventually receive the benefit of the property if that was indeed the arrangement.
- [49] It is very interesting that the claimant says the defendant maintained contact with Leita and not him. Again, I find this most curious since Leita would not have been on the receiving end of any benefit at all. It would have suited the claimant, logically, to maintain contact with Mrs Jeffers since he says he was the person settling the arrears and making mortgage payments in exchange for the property. In other words, it would have made more sense to get the information, directly from the horse's mouth.

- [50] The relationship between these parties is non-existent. It seems they merely knew that they were related but never really knew each other. What then is striking to the court is why the defendant would reach out to an uncle she never really knew to save her property. What is also strange is that she would embark upon such an agreement to hand over her interest in land and a house she built using her own money and a NHT loan to a family member she had never met up to 2003 when the mortgage fell into arrears.
- [51] Given the variables just discussed, I find on a balance of probabilities that the evidence is insufficient to show that there was some common understanding or agreement between the claimant and the defendant as to the future of the disputed property. Particularly that the claimant was to benefit after settling the mortgage payments. I can make no finding in relation to what the agreement was between Leita and Mr Taylor. The result though would have been the same either way. Since I have found that there is no agreement as between these parties, it does not matter that the court cannot properly determine Leita's role and the true terms of the agreement.
- [52] Therefore, I do not find that a promise could be reasonably imputed from the conduct of the parties. For completeness, the court will nonetheless consider the remaining requirements.

(2) The Reliance

- [53] The issues of fact which surround the issue of reliance are:
- a. Did the claimant pay the arrears;
  - b. Can it be said that the claimant paid the mortgage instalments and if so when did he start; and
  - c. Is there evidence to suggest that the claimant completed all the improvements to the property as he alleges.

In considering what evidence can rightly amount to reliance, the court must look at the credibility of the witnesses.

- [54] As it relates to the mortgage instalments, the dispute is not whether Mr Taylor paid any of the instalments but when he started and whether he was consistent. Mr Taylor says that he met all the mortgage payments as he promised to do after meeting the arrears in 2003. He says that he moved into the house in 2004 and continued to pay the instalments. On the contrary, Mrs Jeffers denies that her uncle was living at her house in 2004. She says that she told her uncle to cover the mortgage instalments in 2010 because at that time she was told that he was living at her house and so he only covered the instalments as at 2010. She however does not account for how the mortgage payments were made between 2004-2010. She says she made payments but did not say between what periods she did so.
- [55] In relation to the improvements to the house, Mr Taylor says that he fixed the roof, tiled and paved the house, install plumping and windows as well as install walk-in wardrobes and repainted the whole house. I have noted though that he has no documentary evidence of the monies spent to undertake the renovations. On the other hand, Mrs Jeffers maintains that her house was complete before she left Jamaica. As such, to her knowledge, there would be no need to pave the house or fixed the plumping or the roof. She contends that the improvements done to the house by Mr Taylor were done to '*suit his own needs.*'
- [56] I have had an opportunity to examine the both witnesses in this matter. I have assessed their responses in court and I have looked at their demeanor. I have also analysed the evidence that was given by both of them and have use these to come to the following conclusions:
  - a. My assessment of Mr Taylor has led me to believe that he is an honest man as he was forthright in his answers when cross examined on the issue of the mortgage instalments and improvements to the house. He was very adamant about his position and did not withhold his inability to provide

receipts nor did he retract any of his answers even when asked difficult questions. Though I cannot say how much improvement was done to the house, I believe that he made significant renovations to the property and put money towards mortgage instalments. I also believe him when he says that he moved into the house in 2004 and made mortgage payments as at that time.

- b. On the other hand, Mrs Jeffers evidence has left tiny holes in her story. She did not come across as being totally dishonest but it was as though she had no dealings with the house and did not know what was occurring in Jamaica while she lived in St Kitts/Nevis. I believe she did fall into arrears and had significant financial problems. I however also believe that she built a functional house before her departure to St Kitts/Nevis. There was no indication that she maintained the house while she was abroad and as such, I find on a balance of probabilities that the house fell into disrepair; the extent of which was unknown to her. I also find that the repairs undertaken by Mr Taylor were never done with her knowledge or approval.
- [57] In all circumstances, though I am prepared to find that Mr Taylor paid the mortgage instalments from 2004 and made significant improvements to the property, I cannot find that this was done based on a promise made between himself and Mrs. Jeffers, nor can I find that the restorations efforts were done with her approval. Therefore, I cannot find that Mr Taylor placed reliance on a promise made by this defendant when he did these things.
- (3) The Detriment
- [58] The only issue to consider here is what detriment did the claimant suffer, if any. This issue I find is determinative having regard to what amount of time and effort the court is willing to say that Mr Taylor invested in the property. He says he invested \$2,500,000.00 for renovation efforts in addition to meeting the mortgage payments and settling the arrears. Since I have found that he met the instalments

and made significant renovations, there is no difficulty in seeing the detriment this would have caused him. Mr Taylor has said that he could have used all the moneys used to settle the arrears, pay the instalments and make the renovations to build a home for himself and his wife. However, the issue is not whether there is some detriment but whether in reliance upon a promise made between the parties he acted to his detriment. I cannot find in all the circumstances that he did act to his detriment in reliance on a promise made by Mrs Jeffers.

- [59] I find therefore that Mr Taylor has not suffered detriment because of his reliance on a promise made by Mrs Jeffers as there was no promise to begin with.

(4) Miscellaneous Issue

- [60] The court is constrained to address one last issue for completeness of the matter. It was noted that the claimant made substantial submissions in relation to the defendant's non-disclosure of some documents as well as the mention of the documents in her viva voce evidence given in court.
- [61] As it relates to the non-disclosure of the documents, it must be remembered that a party cannot rely on a document which it did not disclose. To this end, I have noted that the documents which are at the heart of the claimant's submissions, though relevant, were never disclosed by the defendant nor was the court's permission sought to enter these into evidence. It is strange that the claimant would raise this issue when the documents in question would not have benefited his case (based on his own submissions). Even so, since the court has not had sight of the documents in question, I find that there is no injustice or prejudice caused to the claimant as no consideration was given to the veracity, authenticity or existence of them.
- [62] The defendant was permitted to give viva voce evidence in court. It was submitted by the claimant that this proved prejudicial to him as Mrs. Jeffers was allowed to go beyond the bounds of her own pleadings. Firstly, it must be clearly stated that in furtherance of natural justice principles and having regard to the overriding

objectives of the CPR, the court will not allow one party to embark upon an unfair or unjust trial of the matter. Secondly, the claimant had every right to object to points made which they thought would have been unfair or for which the prejudicial value outweighed the probative effect. Further, it is to be noted that the court cannot and will not litigate a case on behalf of a particular party, though the court will fairly adjudicate the case and prevent clear prejudicial information from being brought out in evidence, it is not the court's duty to put forward a party's case nor to defend it. It is the duty of the party to know his case and put his/her best arguments forward. The court cannot and will not raise objections on behalf of a party to serve that party's interest. That is neither fair nor just and does not make the court an impartial, unbiased tribunal of law and fact.

## **Conclusion**

[63] In concluding, I must lament on the fact that the outcome of this case was not easily arrived at, especially considering that I have found that the claimant has spent substantial time and money on the house in dispute. However, the simple fact is that the principle of proprietary estoppel requires the person relying on it to show and prove all three elements. Though I am willing to accept that Mr Taylor paid the mortgage instalments and improved the house, I do not believe he was given a promise by Mrs Jeffers. She was abroad and it is clear that he took most, if not all, his instructions from his sister Leita. This has caused his claim to fail.

## **ORDERS**

[64] The court hereby orders:

- I. Judgment for the defendant; and
- II. Cost to the defendant to be taxed if not agreed.