IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV02230

BETWEEN	**MARLENE WRIGHT**	**CLAIMANT**
AND	**ANN-SAVOY SMITH**	**DEFENDANT**

IN OPEN COURT

Mr Cecil J Mitchell instructed by Cecil J. Mitchell & Co. for the claimant.

Mr Vernon Daley for the defendant.

HEARD: March 21, 2022 and November 4, 2022

Proprietary Estoppel – Whether claimant can rely on proprietary estoppel – Whether property was gifted to claimant.

PETTIGREW COLLINS J.

THE CLAIM

[1] The claimant Marlene Wright filed a Fixed Date Claim Form (FDCF) on the 26th of June 2020. That FDCF is supported by an affidavit. She seeks the following orders against the defendant, Ann-Savoy Smith:

1. A declaration that the claimant is the beneficial owner in possession of house and land located at Lot 54A Hellshire Drive, Hellshire Park Estate in the parish of St. Catherine and registered at Volume 1191 Folio 403 of the Register Book of Titles.

2. A declaration that the claimant has one hundred percent (100%) beneficial interest in the house and land and all those premises located at Lot 54A Hellshire Drive, Hellshire Park Estate in the parish of St. Catherine registered at Volume 1191 Folio 403 of the Register Book of Titles.

3. That this Honourable Court do direct the Registrar of Titles to register the claimant as the registered owner of all those premises located at Lot 54A Hellshire Drive, Hellshire Park Estate in the parish of St. Catherine registered at Volume 1191 Folio 403 of the Register Book of Titles.

4. An injunction against the defendant from challenging the ownership and possession by the claimant of the house and land situated at Lot 54A Hellshire Drive, Hellshire Park Estate in the Parish of St. Catherine registered at Volume 1191 Folio 403 of the Register Book of Titles.

5. An injunction against the defendant from interfering with the claimant's exclusive and quiet enjoyment of the house and land situated at Lot 54A Hellshire Drive, Hellshire Park Estate in the Parish of St. Catherine registered at Volume 1191 Folio 403 of the Register Book of Titles.

6. An order that the transfer of the said property from the defendant to the claimant be exempted from transfer Tax and Stamp Duty.

7. That the cost of this claim be borne by the defendant.

8. Such further and other order as may be just.

AGREED FACTS

[2] The parties agree that the disputed property was purchased on December 13, 1985, by Miss Lorna Leonie Ricketts who is now deceased. Miss Ricketts is the older sister of the claimant and the mother of the defendant. Both parties agree

that at the time of the purchase, the house in question was what is commonly referred to as a quad, that is a single self - contained room and that Miss Ricketts and Mr. Herbert Smith the defendant's father, lived at the property in the early years.

[3] It is also agreed that while Miss Ricketts and Mr Smith lived at the disputed property, various family members and friends stayed at the property. Although the claimant stated in her affidavit that Miss Ricketts bought a house in Garveymeade, it is not disputed that the house was purchased by Miss Ricketts and Mr Smith as joint tenants. Neither is it disputed that Miss Ricketts became pregnant with the defendant and that immediately after giving birth to the defendant, she relocated to the Garveymeade house and never returned to live at the disputed property.

[4] It is also agreed that Miss Ricketts died intestate on November 22, 1990 and that the defendant is her only child. It is also not disputed that after Miss Ricketts' death, the claimant remained in possession and control of the disputed property. The parties also agree that when the claimant took possession of the disputed property, there were no improvements to the property. Also, that the claimant has maintained, carried out repairs and made substantial additions and improvements to the disputed property which is now a two storey three-bedroom and three-bathroom house.

[5] It is further agreed that Miss Smith attended at the office of the Administrator General and signed a document dated March 13, 2007, agreeing to transfer ownership of the disputed property to Miss Wright but that the Administrator General later had the property transferred to the defendant. The parties also agree that negotiations to compensate the defendant for the value of the quad were unsuccessful.

THE CLAIMANT'S CASE

[6] The claimant's evidence in chief is contained in three affidavits, the second of which was filed on March 10, 2021 in response to that of the defendant. The third affidavit was filed on February 25, 2022 in response to that of Herbert Smith. Miss Wright stated that she had a very close relationship with Miss Ricketts who

had taken over the role of mother to her while she was attending school. She said that she lived fulltime with Miss Ricketts at the disputed property while she attended high school. Miss Wright said that in 1987, she was still living at the disputed property. She said that Miss Ricketts had purchased a house in Garveymeade and in that same year, Miss Ricketts told her that she was giving her the disputed property and Miss Ricketts handed over the disputed property to her and gave her the keys and documents relating to the property. Miss Wright did not state what documents she received from Miss Ricketts. According to Miss Wright, there was never any question of Miss Ricketts simply allowing her to live at the premises.

[7] Miss Wright averred that she took full control and possession of the house and has exercised all acts of ownership over the disputed property. She further stated that it was in reliance on the fact that her sister had given her the disputed property that she maintained, repaired and carried out substantial additions and improvements to the house at a cost in excess of seven million dollars ($7,000,000.00). Miss Wright also stated that she has paid off the mortgage on the property. Further, that as a result of the improvements she carried out, the property now values in excess of twenty-two million dollars ($22,000,000,00).

[8] Miss Wright denied that she pressured the defendant or told her that if she did not turn over the house to her, she could not live at the disputed property. She also stated that when the defendant executed the document dated March 13, 2007, this was done in the presence of two officers from the Administrator General's Department as well as Miss Wright and her Attorney-at-Law.

[9] She also stated that the officers at the Administrator General's office explained to the defendant in great detail and comprehensively the effect of the document she was executing and that neither she nor her Attorney-at-Law took part in the conversation between the defendant and the officers at the Administrator General's office.

[10] The claimant also stated that there was a mutual agreement and understanding between the parties that the claimant was prepared to pay the value of the original quad to the defendant after a valuation was done. However, the

arrangement fell through as the parties could not agree on the value of the original quad.

[11] Miss Wright denied Mr. Smith's assertion that he spoke to her regarding her occupation or construction and improvement of the disputed property. She also denied that there was ever between them, any argument or disagreement about the property.

[12] In cross examination the claimant stated that she has been a business woman for more than 20 years. She agreed that she was a child attending primary school when Miss Ricketts bought the disputed property and stated that she lived at the disputed property from she was in the 8th grade. Miss Wright also agreed that her sister was intelligent and generally made good decisions for herself. Further, that Miss Ricketts' loved the defendant dearly and wanted the best for her. She agreed that Mr Smith had other children. Ms Wright said that when her sister was in the hospital she remained at the house.

[13] She agreed that prior to purchasing the house Miss Ricketts lived in Majestic Gardens and that she had been a typist at the Ministry of Housing. Although in her affidavit the claimant agreed that she was among the persons permitted to stay at the disputed property while Miss Ricketts lived there, she disagreed in cross examination that she was permitted to stay over at the house at various times and said that she lived with her sister since she was in the 8th grade. The claimant also stated that she became pregnant quite early whilst she was in the 11th grade and that she had two children, one year apart. She said that she was pregnant, presumably with her first child, at the same time that Miss Ricketts was pregnant with the defendant. The claimant denied suggestions put to her that when her sister went to the hospital, Mr Smith had locked up the house and given the keys to a neighbour. She averred that her sister specifically told her that she was giving her the house to live.

[14] She stated that it was herself, her Attorney-at-law, her mother and Miss Smith who visited the Administrator General's office. The claimant denied that Ms Smith used to stay with her while she was attending university. The claimant agreed that Miss Smith did not have a lawyer with her at the Administrator General's

office. She stated that she was not with Miss Smith when she signed the documents. Miss Wright said she was about 16 or 17 years old when Ms Ricketts died. She stated that she started the construction in 1999 and finished before 2005.

DEFENDANT'S CASE

The defendant's evidence

[15] According to Miss Smith, after her mother moved to Garveymeade, Miss Ricketts allowed the claimant to reside at the disputed property. She said she was about two years-old at the time of her mother's death. Further, that it was in 1997 that she saw construction taking place at the disputed property and in the ensuing years, there were substantial additions.

[16] The defendant stated that when she was 13-years-old she became aware that a representative for the Administrator General for Jamaica had contacted the claimant with respect to settlement of her mother's estate. Miss Smith said she overheard the claimant telling her grandmother that the officer told her that Ms Smith was to get the disputed property and asked Miss Wright who permitted her to build on the property. According to the defendant, she was subsequently pressured by her grandmother to tell the claimant that she would not keep the house when she became 18-years-old. She said she was also pressured by the claimant who on one occasion told her that if she did not give her the disputed property, she could not stay there.

[17] The defendant said that in 2007, while she was in her first year at university and staying with the claimant, the claimant told her that they would go to the Administrator General's office to sign over the house to the claimant as she had spent a lot of money on it and had taken great risks. The defendant said that the next day, Ms Wright caused a driver to take them to the Administrator General's office. While at the office, Miss Smith said she signed the document because she felt pressured to do so. Further, that the officers at the department expressed scepticism about the course of action that was adopted but that everyone spoke in technical terms and she was anxious to get the whole matter over with.

[18] Miss Smith said in 2018, the claimant again asked her to sign over the property to her and told her that she should not worry as she would give her 'a thing'. Ms Smith said she was shocked by this request because she thought the property had already been transferred to the claimant. She learnt that she had not in fact signed an instrument of transfer and so the disputed property had been transferred in her name on February 8, 2008.

[19] The defendant said she refused to transfer the disputed property to the claimant as she was far more mature and had taken time to seek guidance on the issue. Instead, she offered the claimant the option of selling the house on the open market and giving her the value of the original structure. However, she said the claimant disagreed with this approach. Further negotiations were unsuccessful as the claimant was unwilling to compromise in paying her the true value of the original house. Accordingly, the defendant said that in February 2020, she gave the claimant notice to quit and deliver up possession of the property.

[20] The defendant stated that neither her mother nor the administrator of her mother's estate gave Miss Wright permission to carry out repairs and improvements to the property and that to the extent she did so, she acted to her detriment.

[21] In cross examination, the defendant agreed that up to 2013, she had a good relationship with the claimant and that they were close. She also agreed that since she was a child, Miss Wright was doing things at the disputed property that an owner would do.

[22] She stated that she went to the Administrator General's Department on two occasions. On the first occasion, the officers at the Department advised her that the house was completely hers. The defendant said that on the second occasion, she went to sign some documents and that she knew that the purpose of her going there was to transfer the house to the claimant. She said the purpose was to make it clear to them that she did not want the house. She wanted it to be transferred into the claimant's name. The defendant said that when she went in 2007, that was the second time and she was about 18 years old at that time.

[23] The defendant admitted that she did not disclose to the officers at the Administrator General that she was being bullied or pressured to sign over the house to Miss Wright. The defendant agreed she was of the view that the officers at the Administrator General's Department were there to protect her interest. She also agreed that it was fair to say that Ms Wright was the owner of the house from 2007. Miss Smith agreed that Ms Wright should be compensated for the substantial work she has done at the house. Further the defendant said she assumed that Ms Wright was the one paying taxes for the property.

[24] The defendant in cross examination also gave evidence to the effect that she stopped regarding the house as Miss Wright's because after she signed the transfer she regretted it. She said her circumstances changed, she had a child and for a couple of years had rented accommodation. She agreed that it is because she wanted the financial advantage why she wanted 100% interest in the house.

Herbert Smith's evidence

[25] Mr Herbert Smith, the defendant's father, gave evidence on her behalf. His evidence in chief was contained in an affidavit filed on May 12, 2021. He stated in his affidavit that he was in a common law relationship with Miss Ricketts for twelve years prior to her death. He said that he and Miss Ricketts lived at the disputed property for about three years and that in about 1988, he and Miss Ricketts purchased the property at Garveymeade as joint tenants and that they both moved from the disputed property as soon as Miss Ricketts was discharged from the hospital after giving birth to the defendant. He said Miss Ricketts allowed the claimant to reside at the disputed property. Ms Ricketts, he stated, on more than one occasion told him that the disputed property was to go to the defendant. He stated that it is untrue that Miss Ricketts gave the claimant the property before her death. Further, that Miss Ricketts never told him that she had given the disputed property to the claimant.

[26] Mr. Smith said that in 1997, when he saw construction taking place at the disputed property, he asked the claimant why she was carrying out construction on the property when she knew it belonged to Miss Smith. He said this caused

an argument and he left the property. To prevent further quarrel, Mr Smith stated that he left the issue to be resolved by Miss. Smith when she became an adult.

[27] During cross examination, Mr Smith agreed that he and Miss Ricketts had an attorney at law and that the concept of joint tenancy was explained. He stated that he had six other children which Miss Ricketts knew about. He said that while he was concerned that Miss Wright was doing the construction to the house in 1997/1998, he did nothing to stop it, but chose to leave the matter alone. He said that the defendant was about 9 years old at the time.

CLAIMANT'S SUBMISSIONS

[28] Mr. Mitchell on behalf of the claimant, submitted that promises and encouragement were made to Miss Wright which caused her to act to her detriment. Counsel claimed Miss Ricketts gave Miss Wright full control and possession so that she carried out the acts of ownership of the disputed property, and gave her assurance that Miss Wright would acquire 100% beneficial interest in the disputed property. Mr. Mitchell also pointed to Miss Smith's action of signing the instrument giving instructions for the property to be transferred to Miss Wright and her act of asserting ownership over the property only when she realised that the instrument did not actually result in the transfer of the disputed property to the claimant. Counsel argued that in reliance on these promises and statements, written and unwritten as well as the conduct of the parties, Miss Wright carried out acts of ownership of the disputed property. For this submission, he relied on ***Pascoe v Turner*** [1979] 2 All ER 945.

[29] Counsel further argued that Miss Wright acted to her detriment by expending significant amounts of money to expand and improve the disputed property and pointed out that that aspect of the case is not contested. According to counsel, the requirements of the equitable doctrine of estoppel have been met and Miss Smith holds the disputed property on constructive trust for Miss Wright and is estopped from denying the trust. Further, Miss Wright is entitled to 100% beneficial interest in the disputed property.

DEFENDANT'S SUBMISSIONS

[30] Mr. Daley for the defendant submitted that the evidentiary basis for the assertion by the claimant that she was gifted the property is very thin. He argued that while Ms Wright was permitted to live at the property, that fact of itself does not provide a sufficient basis on which to conclude that her sister intended her to have the property.

[31] Counsel asked the court to consider that Ms Ricketts was a typist of modest means, that acquisition of a home is a huge investment and therefore not parted with lightly. He also asked the court to consider that at the time of her death Ms Ricketts had a small child and must have intended that adequate provision be left in place for her. Further, that giving away a valuable asset would seem in conflict with that mind set and the other property she owned was as a joint tenant.

[32] In his closing submissions, counsel highlighted that the claimant admitted in cross examination that the defendant was an intelligent and sensible young woman. Further, that she received legal guidance when she was acquiring the property with Mr. Smith and that she would have been clear on the consequence of joint tenancy. Mr. Daley argued that that was important in a context where Mr. Smith had other children outside of their child and this was known to Ms Ricketts. Counsel stated that Ms Ricketts would know that in the event of her death, the property went to her common law spouse who had other children.

[33] In light of Miss Rickett's inability to speak to any discussion that may have taken place between her and the claimant, counsel relied on ***Gillett v Holt*** [2001] 1 Ch D 210 and urged the court to look at the claim in the round to determine whether any promise was made to the claimant. Mr Daley submitted that in the round, the claimant has not shown that she was given an assurance or encouragement by Miss Ricketts that she would be given the property. Further, submitted counsel, since there was no assurance or encouragement, there could be no reliance placed on any assurance or encouragement. Additionally, he argued that to the extent that the claimant acted to her detriment, she has no recourse. Counsel relied on ***Rosetta Dyson v Vincent Nelson and another*** RMCA no. 19/2000. He further argued in his closing submissions that even if one could say that there

was detrimental reliance, the court has to consider whether action was taken with promptitude. The claimant he said was at the property up to the time of the estate being administered and transferred to the beneficiary and no action was taken by her until 2021.

[34] It was counsel's further argument that after Ms Ricketts' died intestate, the property passed to the defendant, the sole beneficiary under her estate. The defendant, he noted, was a minor, therefore the estate was entrusted, under section 12 of the Intestates' Estates and Property Charges Act, to the Administrator General who had the duty to administer the estate and distribute the assets. Further, the Administrator General stepped into Ms Ricketts' shoes to protect Ms Smith's interest. Mr. Daley argued that there is no evidence from the claimant that the Administrator General encouraged her to expend money to improve the property or stood by and acquiesced in her doing so. Since there was no such encouragement or acquiescence by the Administrator General, the detriment, if any, to which the claimant was put is of her own making.

[35] Counsel placed reliance on ***Dillwyn v Llewellyn*** [1862 45 ER 1285]. He also submitted in his closing submissions, that the Administrator General, before the transfer took place, had regard to competing interests and there was no evidence of competing interests being advocated at the time, before the Administrator General. According to counsel, all we have is the claimant taking the defendant to the office and executing a document there.

[36] In relation to the document signed by the defendant which she thought had the effect of transferring the disputed property to the claimant, Mr Daley advanced that this was done under great pressure and the defendant had no legal representation to guide her on her rights. Further, that the Administrator General did not act on those instructions and the property was accordingly transferred to the defendant. He argued that in any event, the promise the claimant relies on was made by Miss Ricketts and therefore the execution of the document by the defendant is of no consequence. He also submitted that the documents signed by the defendant do not advance the claimant's case and in an event the documents executed by the defendant came long after the construction had taken place.

[37] Further, Mr Daley urged the court to consider the principle of indefeasibility of title. He urged that the court should satisfy itself that the claimant is not just now making a claim because it is self-serving. There is no evidence apart from her say so, that the property was gifted to her. The defendant counsel says, does not resile from the position that there is an equity to be satisfied; it is for the court to determine how that equity is to be satisfied.

[38] Finally, Mr. Daley submitted that the claimant is not entitled to any interest in the property. He says however, that if the court finds that an interest exists, it is to be satisfied by the minimum necessary to do justice. He argued that the claimant has had the benefit of the property for a period in excess of 30 years without rent or charge; if she has any interest, the equity would be satisfied by allowing her to remain in the disputed property for an additional six months.

THE ISSUES

[39] It is agreed by both sides that this case raises the question of whether the claimant can rely on the doctrine of proprietary estoppel to ground her claim to entitlement of the disputed property. The issues subsumed under that general question are:

a) Whether there was any representation, promise or encouragement held out to the claimant that the property belonged to her

b) If there was, did the claimant rely on any such representation, promise or encouragement to her detriment.

c) If the two questions above are answered in the affirmative, what is the remedy to which the claimant is entitled.

The issues at (a) and (b) will be discussed together.

THE LAW

[40] In the case of ***Annie Lopez v Dawkins Brown and Glen Brown*** [2015 JMCA Civ 6, Morrison JA as he then was, expounded upon the law of proprietary estoppel. At paragraphs 65 and 66 of the judgment, he proffered the following:

"65 Both counsel placed reliance, as did Campbell J, on what Lord Walker has referred to (in Yeoman's Row Management Ltd and another v Cobbe [2008] UKHL 55, para. 52) as "[t]he great case" of Ramsden v Dyson. Lord Kingsdown's classic statement of the principle in that case (at page 170) still underpins the modern law of proprietary estoppel:

> *"If a man, under a verbal agreement with a landlord for a certain interest in land, or what amounts to the same thing under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and, upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation."*

66 ...We were also referred by Miss McBean to the decision of the Court of Appeal of England in Crabb v Arun District Council, a case involving a claim to a right of access over land to a public highway.

'In that case, Lord Denning MR said this (at page 871):

> *"When counsel for Mr Crabb said that he put his case on an estoppel, it shook me a little, because it is commonly supposed that estoppel is not itself a cause of action. But that is because there are estoppels and estoppels. Some do give rise to a cause of action. Some do not. In the species of estoppel called proprietary estoppel, it does give rise to a cause of action...What then are the dealings which will preclude [a landowner] from insisting on his strict legal rights? If he makes a binding contract that he will not insist on the strict legal position, a court of equity will hold him to his contract. Short of a binding contract, if he makes a promise that he will not insist on his strict legal rights—even though that promise may be unenforceable in point of law for want of consideration or want of writing—and if he makes the promise knowing or intending that the other will act on it, and he does act on it, then again a court of equity will not allow him to go back on that promise...Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights—knowing or intending that the other will act on that belief—and he does so act, that again will raise an equity in favour of the*

other, and it is for a court of equity to say in what way the equity may be satisfied.

The cases show that this equity does not depend on agreement but on words or conduct. In Ramsden v Dyson [(1866) LR 1 HL 129 at 170)] Lord Kingsdown spoke of a verbal agreement 'or what amounts to the same thing, an expectation, created or encouraged'."

[41] At paragraph 67 Morrison JA continued the exposition:

[67] In similar vein, Scarman LJ added the following (at page 875):

"The plaintiff and the defendants are adjoining landowners. The plaintiff asserts that he has a right of way over the defendants' land giving access from his land to the public highway. Without this access his land is in fact landlocked, but, for reasons which clearly appear from the narration of the facts already given by Lord Denning MR and Lawton LJ, the plaintiff cannot claim a right of way by necessity. The plaintiff has no grant. He has the benefit of no enforceable contract. He has no prescriptive right. His case has to be that the defendants are estopped by their conduct from denying him a right of access over their land to the public highway. If the plaintiff has any right, it is an equity arising out of the conduct and relationship of the parties. In such a case I think it is now well-settled law that the court, having analysed and assessed the conduct and relationship of the parties, has to answer three questions. First, is there an equity established? Secondly, what is the extent of the equity, if one is established? And, thirdly, what is the relief appropriate to satisfy the equity?"

[42] At paragraph 68, he offered further guidance as set out in an authoritative text:

[68] The modern law of proprietary estoppel is aptly summarised by the authors of Gray & Gray in this way (at para. 9.2.8):

"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'). An estoppel claim succeeds only if it is inequitable to allow the representor to overturn the assumptions reasonably created by his earlier informal dealings in

> ***relation to his land. For this purpose the elements of representation, reliance and disadvantage are inter-dependent and capable of definition only in terms of each other. A representation is present only if the representor intended his assurance to be relied upon. Reliance occurs only if the representee is caused to change her position to her detriment. Disadvantage ultimately ensues only if the representation, once relied upon, is unconscionably withdrawn."***

[43] Morrison JA thereafter sounded a caution on placing too great an emphasis on the notion of unconscionability. He said:

> ***[69] As will be seen, the notion of unconscionability of some kind is central to this and other formulations of the principle. However, Lord Scott's important judgment in Yeoman's Row Management Ltd and another v Cobbe, to which Mr Williams referred us, sounds an important caution (at para. 16) against allowing unconscionability to take on a life of its own:***
>
> > ***"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."***

[44] At paragraph 70 onwards, he gave further clarification on the doctrine:

> ***[70] Further, Lord Scott continued (at para. 28):***
>
> > ***"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."***

> ***[71] Attorney-General of Hong Kong and another v Humphreys Estate (Queen's Gardens) Ltd [1987] 2 All ER 387, to which Mr Williams also referred us, also makes it clear that it is important in every case in which a claim based on proprietary estoppel is made to have regard to the particular facts of the case…***
>
> ***[72] …***
>
> ***[73] 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 actio***

[45] In ***Crabb v Arun DC*** [1975] 3 All ER 865, the court of appeal found that an equity had been established in favour of Mr. Crabb as the defendant Council by its word and conduct had led Mr. Crabb to believe that he had access at another point of entry to the land which caused Mr. Crabb to act to his detriment by selling the front portion of his land. The defendant was therefore estopped from relying on their strict legal rights. Although it would have been reasonable for Mr Crabb to pay for the use of the other point of entry, in the circumstances where his land had been landlocked and useless for over 5 years, the court found it reasonable that the minimum required to satisfy the equity was to grant him free access via this second point of entry.

[46] Lord Denning MR at page 871 of the judgment observed the following:

> ***"The basis of this proprietary estoppel—as indeed of promissory estoppel—is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law. The early cases did not speak of it as 'estoppel'. They spoke of it as 'raising an equity'. If I may expand that, Lord Cairns***

said in *Hughes v Metropolitan Railway Co* ***[1877] 2 App Cas 439 at 448, [1874–80] All ER Rep 187 at 191): '… it is the first principle upon which all Courts of Equity proceed … ' that it will prevent a person from insisting on his strict legal rights—whether arising under a contract, or on his title deeds, or by statute—when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties.*** *Trees House, Charles Rickards v Oppenheim* ***([1950] 1 All ER 420 at 423, [1950] 1 KB 616 at 623)... In*** *Birmingham Land Co v London and North Western Railway* ***[1888] 40 Ch D 268 at 277, [1886–90] All ER Rep 620 at 622) Cotton LJ said that '… what passed did not make a new agreement but what took place … raised an equity against him'. And it was the Privy Council who said that 'the Court must look at the circumstances in each case to decide in what way the equity can be satisfied', giving instances: see*** *Plimmer v Mayor of Wellington* ***[714], [1881–5] All ER Rep 1320 at 1325, 1326).***

Lord Scarman set out at page 876 of his judgment Fry J's speech in ***Wilmott v Barber*** [1880] 15 Ch D 96 which he said set out the matters of fact which has to be found in order to establish the equity.

"It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly [if I may digress, this is the important element as far as this appeal is concerned], the defendant, the possessor of the legal right, must have encouraged the *plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right."*

[47] In ***Pascoe v Turner*** [1979] 2 All ER 945, the plaintiff, and the defendant lived together as partners. After the relationship ended, the plaintiff moved out of the house though he still visited the defendant occasionally. He expressed to the defendant that the house and everything in it was hers. He also expressed his intention to others to give the deeds of the house to the defendant. The defendant spent most of her income to redecorate, improve and repair the house. The parties had a dispute and the plaintiff demanded possession of the house. The defendant refused to leave. The plaintiff issued proceedings for possession. By counterclaim the defendant asked for declarations that the house and its contents were hers and that the plaintiff held the house on trust for her. In the alternative she sought a declaration that the plaintiff had given her a lifetime licence. The county court judge dismissed the plaintiff's application. He found that the plaintiff had made a gift of the contents of the house to the defendant and that a beneficial interest in the house had passed from the plaintiff to the defendant under a constructive trust, inferred from the words and conduct of the parties. The plaintiff appealed.

[48] Cumming-Bruce LJ concluded that the judge fell into error when he held that a constructive trust could be inferred from the facts. He postulated that the plaintiff made an imperfect gift of the house to the defendant and the substantial work carried out on the house while the plaintiff watched and encouraged her shows that a case of estoppel arose in her favour. The court considered all the circumstances and held that the grant of the fee simple to the defendant was what was required to satisfy the equity. On the matter of satisfying the equity, Cumming-Bruce LJ said at page 950g:

> ***"So the principle to be applied is that the court should consider all the circumstances and, the counter-claimant having at law no perfected gift or licence other than a licence revocable at will, the court must decide what is the minimum equity to do justice to her having regard to the way in which she changed her position for the worse by reason of the acquiescence and encouragement of the legal owner."***

[49] The law was also expounded and applied in the case of ***Gillett v Holt*** [2001] Ch 210 Mr. Gillett, at the age of 16 began working for Mr. Holt in his farming business. Throughout the years, Mr Gillett in reliance on Mr. Holt's assurances,

collected a reduced pay and limited pension, refused other jobs, conducted domestic tasks for Mr. Holt and expended part of the costs for improvement to the farm, which was the base of Mr Holt's business which he had promised to Mr Gillett. The parties' relationship deteriorated and Mr Gillett was dismissed and his name removed from Mr Holt's will. Mr. Gillett claimed equitable relief against Mr. Holt based on proprietary estoppel. The trial judge dismissed Mr. Gillett's claim. He appealed.

[50] Walker LJ held that Mr. Holt's averments formed the foundation for an enforceable claim based on proprietary estoppel. Further, that there must be a sufficient link between the promise relied on and the conduct which constitutes the detriment. The link between the detriment is provided by the bare fact of A encouraging B to incur expenditure on A's land. No mutual understanding is required. He found that Mr. Gillett suffered a detriment and the minimum required to satisfy the equity was for Mr. Holt to transfer the freehold of the farm house to Mr. Gillet along with a sum of money as compensation for exclusion from the rest of the farming business

[51] I accept the principle as expounded by Harrison JA in ***Rosetta Dyson v Vincent Nelson and Consetta Nelson*** RMCA No. 19/2000 at page 6 of the judgment to the effect that where:

> "**a party expends money on the property of another, without the latter's request, prima facie, the former has no claim on such other's property (**Ramsden v Dyson **(1865) L R 1 HL 129)"**

and that:

> ***"If the party expending the money is under a mistaken belief that he has an interest in the said property and the owner of the property knows of the mistaken belief and encourages the expenditure or refrains from informing the person expending the money of his mistake, with a view to benefitting from the mistaken belief, a claim by way of proprietary estoppel arise, in favour of he who expends the money".***

[52] The claimant's attorney at law has argued that Miss Smith holds the disputed property on constructive trust for Ms Wright and is estopped from denying the trust. In the matter of ***Dean Hinds v Janet Wilmot*** 2009 HCV 00519, Edwards

J. at paragraph 25 of her judgment usefully summarized the relevant principles which are applicable in circumstances where a person in whom the legal title to property is not vested claims a beneficial interest in the property on the basis that the individual who holds the legal title holds it as trustee for the beneficial interest of the claimant. She said the following:

> ***I.*** *"**Evidence of a common intention can either be expressed or implied. In the absence of an expressed intention, the intention of the parties at the time may be inferred from their words and/or conduct.***
>
> ***II.*** ***Where a common intention can be inferred from the contributions to the acquisition, construction or improvement of the property, it will be held that the property belongs to the parties beneficially in proportion to those contributions. See Nourse, L.J. in*** *Turton v Turton* ***(1987) 2 ALL ER 641 at p. 684.***
>
> ***III.*** ***In the absence of direct evidence of a common intention, any substantial contribution to the acquisition of the property maybe evidence from which the court could infer the parties' intention:*** *Grant v Edwards* ***[1986] 3 WLR 120, per Lord Brown-Wilkinson. The existence of substantial contribution may have one of two results or both, that is, it may provide direct evidence of intention and/ or show that the claimant has acted to his detriment on reliance on the common intention.***
>
> ***IV.*** ***The claimant must have acted to his detriment in direct reliance on the common intention."***

ANALYSIS

[53] It was accepted in ***Crabb v Arun District Council*** that proprietary estoppel may give rise to a cause of action. Among the dealings which will preclude an owner of land from insisting on his strict legal rights is a promise made by that land owner even in circumstances where such promise may not be enforceable as a matter of strict law (as distinct from equity) because of lack of consideration or an instrument in writing. There is no evidence of consideration passing in the instant case. It is also not disputed that the claimant relies in this instance, on mere words she claims were used by Miss Ricketts. I say mere words because although it is her evidence that Miss Ricketts gave her documents in relation to

the property, she never disclosed what documents were given to her. There is no question that any of the formalities required by law was employed in passing property to the claimant. The three elements must therefore be present in order to ground an estoppel. There must be representation, reliance and unconscionable conduct.

[54] I am mindful of Mr Daley's submission that the now deceased Miss Ricketts was a young woman from an inner city community who from all indications was not someone in receipt of a large sum by way of income and that for her, the purchase of a house was a very significant achievement. The argument is that she is not likely to have given over a house she purchased from limited resources to her teen aged sister. It is noteworthy that Miss Ricketts' death certificate shows her occupation at the time of death as a business woman. Apparently, she had moved on from being a typist at the Ministry of Housing.

[55] It must also be remembered that based on the evidence, this teen aged sister was already a mother of two by the time of Miss Ricketts' death. The defendant's attorney at law has made heavy weather of the fact that Miss Ricketts' spouse had six other children apart from the defendant, and that these children were older. The implication from this counsel says, is that Miss Ricketts would have been mindful that Mr Smith's older children also stood to inherit the Garveymeade house and so Miss Ricketts would have been mindful about making provisions for her only child. It would certainly be wild speculation to say what Miss Ricketts may have had in her contemplation. The evidence is that the Garveymeade house was held by Mr Smith and Miss Ricketts as joint tenants.

[56] The defendant could not have had personal knowledge of any conversation which took place between the claimant and her deceased mother. Any evidence she gives as to any discussion between them is necessarily hearsay. Neither could she have had any personal knowledge as to what her mother's intentions with respect to the property were, since she was an infant at the time of her mother's death. It is therefore Mr Smith and the claimant's evidence that must be relied on to ascertain whether Miss Ricketts gifted the house to the claimant.

[57] Mr Mitchell's submission that the claimant placed reliance on assurance given by the defendant cannot be sustained. It is not denied that in 2007 the defendant had gone to the Administrator General's office and signed documents that she thought had effectively transferred the property to the claimant. She was quite clear in cross examination that as at that point, she thought that the claimant had full ownership of the property and was therefore surprised to learn years later that she needed to take further steps to effect the transfer.

[58] The problem with Mr Mitchell's submission is that the claimant has not given any evidence of any detriment suffered subsequent to, or as a result of the defendant going to the administrator General's office and signing the documents in question. The evidence from the claimant is that she commenced the improvements to the house in 1999 and completed it before 2005. Therefore, her conduct of improving the house was not a result of anything the defendant may have said or done and certainly could not have been as a result of anything said or done by the defendant in 2007.

[59] There is also no question of the Administrator General encouraging or acquiescing in any conduct on the part of the claimant so as to give rise to the existence of an estoppel in the claimant's favour.

[60] Further, although this would not have been a classic case where undue influence could easily have been established, there are aspects of this case including what transpired at the Administrator General's chambers regarding the signing of documents by the defendant that would cause some discomfort to the court. It was the defendant's evidence that she was pressured by the claimant and by her grandmother. Even though this court does not take the view that any direct pressure was brought to bear on the defendant while she was present at the Administrator General's department which caused her then to sign the documents, and although I am satisfied that she was told by officers of that department that the property was solely hers and that she received advice in that regard, it is not difficult to understand the defendant's evidence that she felt pressured. She had gone to the Administrator General's Department with the claimant and the claimant's attorney at law. The defendant had barely attained adulthood and may not have had the level of maturity to be able to fully make an

informed decision. The evidence is that she signed the document on the very occasion that they were first presented to her. She did not necessarily have time to think about and digest the gravity of what she was about to do.

[61] With regard to the claimant's conduct of offering to compensate the defendant for the value of the original structure, I do not find it to be inconsistent with her claim to a proprietary interest. In certain instances, that may simply be a recognition that the other party's interest has been limited and not extinguished.

[62] There is no question that the defendant stood to benefit from the estate of Ms Ricketts. She could only be the beneficiary of the disputed property however, if the disputed property formed part of the estate of the deceased Miss Ricketts. The claimant said in her affidavit that when Miss Ricketts died, the defendant inherited the property by virtue of provisions in the Intestate Estates and Property Charges Act, as Miss Rickets left no will. If in fact Ms Ricketts had acted in such a manner that she no longer held the beneficial interest in the property as at the time of her death, then the argument may be made that the property did not really form part of her estate, and consequently did not fall to be distributed under the provisions of the Intestate Estates and Property Charges Act notwithstanding that the legal title was still held in her name.

[63] The correct position in the instant case, is dependent firstly, on whether Miss Ricketts gave the claimant a licence or an outright gift in the property. If it was a gift of the fee simple interest, then the outcome depends on whether the view is taken that the court must first declare the right said to be acquired by virtue of an estoppel before it can be said to exist, or whether the property is burdened by the equity before the right is declared. The answer to those questions determine in part, whether a trust exists.

[64] The existence of a trust is predicated on there being a common intention whether expressed or to be inferred from the conduct of the parties at the time of the acquisition of the property, and in exceptional instances, after acquisition, and in reliance on that common intention, the party who does not hold the legal interest in the property, acts to her detriment. The factual circumstances to support the existence of a trust do not exist in this case. I am therefore not of the view that a

constructive trust arises in this case and the discussion will be solely on the basis of the applicability of the principle of proprietary estoppel.

[65] I will say at this stage that the Administrator General was entitled to transfer the property to the defendant as she did, since there was no documentary evidence of the existence of any equitable interest or any declaration of any such interest in favour of the claimant, or any proper evidentiary basis for doing otherwise.

[66] It is the evidence of Mr Smith that Miss Ricketts had told him that the disputed house was for the defendant. Although I do not accept his evidence in this regard, I do not think that much turns on that finding. I accept the evidence of the claimant as given in cross examination, that Miss Ricketts' precise words to her were, "I bought a house at Garveymeade so Suzie, I'm gonna give you this house so you and Wray can live". The critical question is what is to be understood from these words. Can these words be regarded as sufficiently unequivocal evidence of a promise that the house was being gifted to her?

[67] The beneficiary to Ms Ricketts' estate was the defendant. Evidently Mr Smith was not then eligible since the Property Rights of Spouses Act had not been passed. It can be argued that even at the time he said he observed that the claimant was carrying out construction at the disputed property, he had no real responsibility legally to safeguard the property on behalf of his daughter, although a prudent individual might have taken steps to do so. I find it extremely difficult to accept that Mr Smith would have chosen to merely ask the claimant why she was carrying out construction on the property when she knew it belonged to the defendant and thereafter not pursue the matter but decided to leave it to be resolved by the defendant when she attained adulthood. His evidence is that his daughter was only nine years old at the time he made the observation. I therefore reject his evidence in that regard. I further reject his evidence that any argument ensued after any conversation with the claimant.

[68] While Mr Smith may have been aware of the construction taking place, I do not accept that he spoke to the claimant on the matter. It is probable that Mr Smith did not concern himself with the construction being done at the property because he either knew that the property had been gifted to the claimant or that she was

permitted to occupy it, with no time limit having been placed on her permission to occupy.

[69] It is noteworthy that the suggestion put to the claimant was that when Miss Ricketts was hospitalized in order to give birth to the defendant, Mr Smith removed all the furniture from the disputed property and took the items to Garveymeade. The claimant agreed that that was what happened. She however denied that Mr Smith had locked up the house and given the keys to a neighbour. She offered that she remained in the house and had the baby on the floor before she went to the hospital. I find this bit of evidence worthy of mention because it in my view speaks to Mr Smith's attitude towards the claimant. Unless there was a drastic change in that attitude, there is not much likelihood that he would have allowed the claimant to remain in occupation without ever saying a single word to her unless he was well aware that she had a right to be there.

[70] I believe in all the circumstances, that the claimant may have understood Miss Ricketts' words as devolving a gift of the property upon her. The problem however, is that the words used may also reasonably be understood to mean that she was only being permitted to reside there. It was not unreasonable for the claimant to have understood those words as conveying a gift to her. It is difficult to say if Mr Smith knew the intentions of Miss Ricketts regarding the property. This court is mindful that the improvements to the property began subsequent to the death of Miss Ricketts. The claimant, based on undisputed evidence, remained in the property for some two years after Miss Ricketts and Mr Smith had relocated, before Miss Ricketts died. There is no evidence that there had been any interference with her use of the property during the two years that Miss Ricketts was alive. That non - interference might have reinforced her view that the property belonged to her. It is undisputed that there had been some nine years of non-interference before the commencement of the construction. Added to that fact is my belief that there was no interference before the involvement of the Administrator General. Ms Wright's view that the property belonged to her would have been even further reinforced.

[71] Also to be considered, is the claimant's evidence alluded to before, that her sister gave her the documents for the house. The claimant did not divulge precisely what these documents were and this court cannot speculate. However, based on the

tenor of claimant's evidence, the fact of receiving those documents helped to concretize her view that some interest in the property was being conferred upon her.

[72] I find that it is on the basis of the assurance given to the claimant (as she understood it) by her now deceased sister that she was giving the property to her that the claimant expended significant sums on the property in order to improve it. Having regard to the claimant's reliance on Miss Rickett's promise to her, it would unconscionable to permit Miss Ricketts if she were alive, to go back on her promise to the claimant. In the same way Miss Smith would have been estopped from reneging on her assurance to the claimant, anyone claiming through Miss Ricketts who is not a bona fide purchaser for value without notice is also estopped. By virtue of the claimant's significant expenditure on the property, an equity has been raised in her favour.

[73] I do not find the principle in the case of ***Rosetta Dyson v Vincent Nelson and Consetta Nelson*** (supra) which was referenced earlier, relevant to this case based on my findings of fact. The claimant in essence regarded the situation as a case of an imperfect gift. There was no formal transfer of the property to the claimant. She acted on the word of mouth of Miss Ricketts. She thereafter suffered a detriment by expending significant sums of money on the property with the assurance that she was the owner. It is this detrimental reliance which takes this case outside of the scenario of a mere gift. It is accepted on the authority of ***Inwards v Baker*** [1965] All ER 446, that where an interest is acquired on the basis of proprietary estoppel a third party is bound.

What is the remedy to which the claimant is entitled?

[74] An equity has quite clearly been raised in favour of the claimant. The question is how is that equity to be satisfied. As was observed earlier, the court in ***Pascoe v Turner*** considered all the circumstances and determined that the grant of the fee simple to the defendant was what was required to satisfy the equity. In ***Crabb v Arun District Council***, the claimant was granted the right of way. In ***Dillwyn v Llewelyn*****,** the claimant received a life interest in the disputed property. The cases seem to indicate that as long as there is no legal

obstacle, such as a prior transfer of the property to a bona fide purchaser for value without notice or a situation where the defendant /promissor did not possess the legal interest in the property (***Earle Alexander Shim v Sylvia Elmay Shim and Elizabeth German*** Claim no. 2005 HCV 02986 Unreported SC case) so as to prevent the court granting a fee simple interest in the disputed property, an order to that effect may be made.

[75] It would not be reasonable as the defendant suggests, to say that the equity may be satisfied by permitting the claimant to remain in the property for a further six months given that she has had the benefit of occupying the property for over thirty years. In the case of ***Seymour v Ebanks***,1980-83 CILR 252 a case from the Cayman Island referenced in ***Commonwealth Caribbean Property Law*** Fourth edition by Gilbert Kodilinye, the claimant had built a cinema on lands over which he had acquired a licence and operated same for some 20 years. The court determined that the equity that the claimant had lost was the right to continue to operate his own cinema. Since the property had been transferred to a third party, it was found that the appellant should have an equity equal to his outlay. He had built the cinema at a cost of 4500 pounds. The declaration of a fee simple interest would perhaps not be appropriate in this instance.

[76] In ***Jennings v Rice*** 2002[EWCA] Civ 159, the court determined that there should be proportionality between the expectation and the detriment. This court is bound by the principle that the relief granted to the person to whom the representation has been made, cannot amount to an accord of a greater interest in law than was within the induced representation. It is true that in this instance, the claimant's expectation is that she would become the owner of the property. But ultimately, the court is required to "*decide what is the minimum equity to do justice"* to the claimant "*having regard to the way in which she changed her position for the worse by reason of the acquiescence and encouragement of the legal owner*." The minimum equity to do justice should at least remedy the detriment suffered by the claimant. Thus even though her expectation of the entire interest in the property is not being realized, it is in my view sufficient that she be allowed to recover at least the value of the improvement that she made to the property.

[77] Given that in the instant case, the claimant made significant expenditure and no doubt improved the house to suit her own personal preference, it is substantially a different house from that which she was permitted to occupy. The claimant will not get any of the declarations sought but she will be awarded the value of the improvements to the property.

[78] In light of my findings I make the following orders:

1. A valuation of the property located at lot 54A Hellshire Drive, Hellshire Park Estate in the parish of St. Catherine and registered at volume 1191 Folio 403 of the Register Book of Titles is to be done within 60 days of today's order. The valuator is to make a separate assessment of the value of the improvements to the original structure.

2. Two thirds of the cost of the valuation shall be borne by the claimant and a third by the defendant.

3. The defendant shall pay to the claimant the value of the improvements to the property located at lot 54A Hellshire Drive, Hellshire Park Estate in the parish of St. Catherine and registered at volume 1191 Folio 403 of the Register Book of Titles, as determined by the valuator.

4. In the event the defendant is unable to pay to the claimant the value of the improvements to the property within 120 days of the valuation, the claimant shall be given the first option to purchase the disputed property.

5. If the claimant is given the option to purchase the property, that option shall be exercised within 90 days of the expiration of the deadline given to the defendant to make compensation to the claimant.

6. In the event the claimant is allowed to exercise the option to purchase the property, she shall pay to the defendant the value of the property less the value of the improvements to the property.

7. In the event the defendant fails to make payment as ordered and the claimant fails to exercise the option within the time stipulated for doing so, the property shall be sold on the open market.

8. In the event any party neglects or refuses to sign any document necessary to give effect to these orders or any of them, the Registrar of the Supreme Court is empowered to, and shall sign the document/s on her behalf.

9. There shall be liberty to Apply.

10. The parties shall file and exchange written submissions on costs within 21 days of this order.

.....
A. Pettigrew Collins
Puisne Judge