

THE EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
ANTIGUA AND BARBUDA

CLAIM NO: 2010/0614

BETWEEN:

DONNA CHIA

Claimant

and

MUERAH BODDIE

Defendant

Appearances:

Mr Conliffe Clarke for the Claimant  
Dr David Dorsett for the Defendant

.....  
2012: March 14  
July 26  
.....

JUDGMENT

[1] MICHEL, J: The dispute in this case is over a portion of land at Stapleton Lane in St John's, more particularly described as Parcel: 210, Block: 61 1793F, Registration Section: Gambles. The Claimant is one of the two co-owners of the land (having acquired same, along with her daughter,

by succession from her father) while the Defendant is an occupant of the whole or a part of the parcel of land (having been put in occupation thereof by the Claimant's father, who was the Claimant and her daughter's predecessor in title of the land).

[2] By fixed date claim form (with accompanying statement of claim) filed on 28<sup>th</sup> September 2010, the Claimant has asked the Court to order the Defendant to give her vacant possession of parcel 210 and to pay damages to her for his trespass on the land. The principal averments in the statement of claim are the following –

1. The Claimant is one of the owners of parcel 210;
2. Prior to the death of her father, the Defendant approached and asked her father to allow him to place his dwelling house on the land since he (the Defendant) was about to have his house placed at the Cooks dump for his failure to pay the rent on another piece of land;
3. Her father gave permission to the Defendant to place his dwelling house on the land on the basis that this was a temporary arrangement until the Defendant found another place to put his house and that the Defendant would perform services for her father and his family in lieu of rent;
4. A formal agreement was drawn up between her father and the Defendant, which is evidenced by a letter from Mr Cyril L. Maundy, who was her father's lawyer, but the agreement was not in the possession of the Claimant;
5. While the Defendant was living on the land, the relationship between him and her father soured and on numerous occasions her father asked him to pay rent or to vacate the land as the arrangement between them was not workable;
6. Her father died in December 1991, but the Defendant continued to perform services for the Claimant in furtherance of the agreement with her father and, intermittently, he would pay

- certain amounts to her upon her request, which amounts she would use to clear the land of brush and bushes;
7. In June 2006 the Claimant and her daughter, Reina James of Brampton, Ontario, Canada, became the registered proprietors of parcel 210 by transmission, whereupon she (the Claimant) offered a formal lease of the parcel of land to the Defendant, but he refused to enter into any lease agreement and so she asked him to remove his house and leave the land;
  8. Despite numerous requests made by the Claimant to the Defendant (through Counsel and otherwise) the Defendant has blatantly refused to give up possession of the land;
  9. The Defendant continues to occupy part of parcel 210; he has erected additions to his dwelling house; and he conducts a business on the land;
  10. The Defendant has fenced parcel 210 and parcel 211 which adjoins it on the boundary butting and abounding Stapleton Lane and he has placed "no trespassing" signs on both parcels of land;
  11. As a result of the Defendant's refusal to give up vacant possession of the land, the Claimant has suffered loss arising from her inability to occupy, use and enjoy the land and from the Defendant's trespass on the land.

[3] Several documents were exhibited by the Claimant with her statement of claim.

[4] By defence and counterclaim filed on 23<sup>rd</sup> March 2011, the Defendant disputed the Claimant's claim and counterclaimed against her for a declaration of his interest in a portion of parcel 210, damages, interest and costs.

[5] The principal averments in the defence are the following:

1. From or before 1990 the Defendant was granted permission by Anthony Joseph Chia, the father of the Claimant and the former registered proprietor, to occupy a portion of parcel 210;
2. On 16<sup>th</sup> June 2006 the Claimant became one of the registered proprietors of parcel 210, subject to such liabilities, rights and interests affecting the land and which do not require noting on the land register;
3. It is denied that the Defendant approached Mr Chia to place his (the Defendant's) house on parcel 21 when the Defendant's house was about to be placed at Cooks dump by his previous landlord as a result of the Defendant's failure to pay his rent;
4. The Defendant met Mr Chia through family relations in 1970 and started working for him until Mr Chia's death in 1991, performing various services for Mr Chia and the members of his family, including his wife, Mrs Rose Chia;
5. Mr Chia was involved in the pool table business and he (the Defendant) was employed to retrieve the monies that had been deposited into the pool tables positioned in a number of bars and other spots on the island;
6. The Defendant worked with Ruthina Edwards in collecting the monies from the pool tables;
7. The Defendant received no substantial or regular remuneration from Mr Chia and was compensated mostly with gifts and favours;
8. The Defendant had a house and art studio on Newgate Street in St John's and, in 1990, the land on which they were located "was sold out from under him" and the new owner gave him notice to move his house and studio;
9. As a temporary measure, he moved his house and studio to a lot owned by a fellow calypsonian at Cooks Hill;
10. The Defendant informed Mr Chia about this development who, in consideration of 20 years of service given to him (Mr Chia) and his family, granted him (the Defendant) permission to have

- his house and studio repositioned on parcel 210 and for the Defendant to occupy the land rent-free for the rest of his natural life;
11. Mr Chia identified the spot to be occupied by the Defendant (measuring 49 feet x 49 feet and demarcated by a metal stake painted red that serves as a landmark) and put the Defendant in possession of that spot;
  12. It is not the case that the permission given to the Defendant by Mr Chia to place his house and studio on parcel 210 was done on the basis that the placement was temporary;
  13. The Defendant was granted permission to occupy the land in consideration of the services performed by him on behalf of Mr Chia and his family and on the understanding and expectation that the Defendant would continue to perform these services, which services he continues to perform for Mr Chia's wife;
  14. The Defendant has no knowledge of any formal agreement or of executing any formal agreement as alleged by the Claimant;
  15. The Defendant denied that his relationship with Mr Chia had soured and asserted that the two of them remained on friendly terms until Mr Chia's death;
  16. The Defendant denied that Mr Chia had asked him to pay rent or vacate the land because "the arrangement was proving unworkable" and he asserted that Mr Chia had never asked him to pay rent or vacate the land and that the arrangement between them did prove workable;
  17. After locating to parcel 210, the Defendant continued to perform duties for the Chia family on a regular basis, including duties for the Claimant, for a period of 7 years following the death of Mr Chia;
  18. The Defendant denied the existence of a formal agreement or any agreement that he was to occupy parcel 210 on a temporary or short-term basis or that he was to pay rent;

19. The Defendant did not pay any money to the Claimant upon her request and no request was made to him by the Claimant;
20. The Defendant did clear the land of brush and bushes on one occasion and has no knowledge of other clearings;
21. The Defendant denies that he was offered a formal lease by the Claimant which he refused to enter into;
22. The Claimant has asked the Defendant to remove his house on parcel 210 and, through her Counsel, she has made numerous requests of him to give up possession of the land;
23. The Defendant denied that he has erected additions to his dwelling house as alleged by the Claimant and he asserted that his dwelling house has at all material times served as a house and artist studio from which he conducts his business;
24. The Defendant denied that he fenced parcel 210 and parcel 211 and asserted that he erected a fence on the northern boundary of parcel 210 which he lawfully occupies and is in possession of;
25. No trespass has been committed by the Defendant in that there has been no unjustifiable or any intrusion by him upon land not within his possession, and the Claimant has suffered no loss.

[6] In his counterclaim, the Defendant averred that –

1. In 1990, the Claimant's predecessor in title, Mr Chia, represented to him that he could remain in possession of a portion of parcel 210 (measuring 49 feet x 49 feet) for the rest of his natural life in consideration for the services performed by him over many years and with the understanding that the provision of these services would continue;

2. The representation made by Mr Chia was to the effect that the Defendant would be granted a life interest in the portion of parcel 210 which he (the Defendant) was put in possession of;
3. Acting upon the representation of Mr Chia, the Defendant entered into possession of a portion of parcel 210 (measuring 49 feet x 49 feet) and has been in possession of it since 1990 and has provided and continues to provide services to Mr Chia's family, including performing personal errands for Mrs Rose Chia;
4. Having acted upon the representation of Mr Chia, the Defendant (now aged 70) has not been able to better himself by acquiring his own distinct property upon which he may place his dwelling house and studio;
5. The present efforts of the Claimant to dispossess the Defendant of his life interest in a portion of parcel 210 is manifestly unfair and/or unjust and, in the circumstances, the action of the Claimant (if successful) would amount to the Claimant taking unconscionable [dis]advantage of the Defendant.

[7] By reply and defence to counterclaim filed on 19<sup>th</sup> May 2011, the Claimant joined issue with the Defendant on his defence and counterclaim and reaffirmed the averments in her statement of claim.

[8] The evidence in this case came from the Claimant and the Defendant only; no other witness having been called by either of them. The Claimant had filed a witness summary of evidence expected to be given by Mr Cyril Maundy, but he died before the trial of the matter so it will never be known whether he would actually have given evidence in the case and what that evidence would have been because he never gave a witness statement. No account will therefore be taken of the aforesaid witness summary.

[9] In her witness statement, the Claimant alleged that she has known the Defendant from the 1960s and that at the time he lived on Newgate Street in a very small house which doubled up as his studio. The Defendant never worked for her father, but was a visitor to their home - as were several other persons who were attracted to playing pools on the tables which were set up in the home – and he would assist with the moving of the pool tables from time to time. Her father did give the Defendant permission to place his house on parcel 210. There was an agreement drawn up by Mr Cyril Maundy, but she does not have a copy of it and she is not aware of the specific terms of it. To the best of her knowledge, the agreement was that the Defendant would pay a nominal sum or render services in return for occupying the land until he found somewhere else to place his house. The Defendant moved his house straight from its Newgate Street location to parcel 210. The Defendant never worked in her father’s business clearing money from the pool tables. He did make errands for her father and her father’s wife and drove her father’s vehicles from time to time, as requested, in return for occupying the land. The Defendant was never an employee in her father’s business - trusted or otherwise. After her father died, the Defendant continued doing driving errands for her and her father’s wife. The Defendant would occasionally drive her three children to and from school in Parham. Despite his errands at the time, her father’s wife and her family were adamant that the Defendant was to vacate the land. The Defendant used to visit her and complain that her father’s wife wanted him out and she (the Claimant) would intervene and permit the Defendant to remain.

[10] The Claimant alleged that in the years following her father’s death, she explained to the Defendant that it was her intention to offer him a nominal rent so that he could remain on the land until he got somewhere else or the land would be developed by her. During those times, in addition to the driving errands, she would intermittently request from the Defendant small sums of no more than

\$200 which she would use to clear and clean the land. In 2006, after the resolution of contentious probate proceedings involving her father's estate, she drafted a new lease agreement and offered it to the Defendant, but he refused to accept it and began making threats against her. It was then that the relationship between the Defendant and her broke down and the Defendant became very hostile and would say that there was a reason why he was placed on the land and that he would not move.

[11] The Claimant concluded her witness statement by alleging that she was advised and believes that the Defendant does not have an interest in parcel 210; that nothing appears on the land register of parcel 210 to indicate that any agreement was made between her father and the Defendant ; that there is no agreement that exists to indicate the life interest claimed by the Defendant; that the Defendant had the permission of the family to remain on the land in return for tasks done by him until 2006 when he refused to accept any formal lease.

[12] Under cross-examination by Dr Dorsett, the Claimant testified that the Defendant became her tenant from 2006 when she became the registered owner of parcel 210, but then she conceded that she did not have a tenancy agreement with the Defendant. She also testified that the Defendant never worked with her father, but then conceded that the Defendant drove pool tables to different locations for her father but he never really worked for him, and then testified that the Defendant did not work for her father for a long time. These concessions and apparent contradictions aside, the Claimant largely reaffirmed under cross-examination much of what was contained in her witness statement relative to the matters in issue in this case.

[13] In his witness statement, the Defendant repeated all of the averments in his defence and counterclaim, including some not recounted above because they are not material to the issues to be determined by the Court in this case. The Defendant concluded his witness statement in the following manner – “The life interest given to me by the Claimant’s father, Mr Anthony Chia, enables me to have a place to live for the rest of my days, which may not be many. This interest ought to be protected and in the circumstances that gave right to this interest I ask this Honourable Court to protect my interest by virtue of what my lawyer states is the doctrine of proprietary estoppel.”

[14] Under cross-examination by Mr Clarke, the Defendant testified that he knew Mr Chia from 1970. Mr Chia was a friend of his sister and had a child with her. He and Mr Chia were good friends. Mr Chia used to visit his sister’s home regularly, which is where he (the Defendant) was living. He used to visit Mr Chia’s business place, which at that time was located at Corn Alley. This is when he met Mr Chia and “started to work for him just around the same time”. He did not just work for Mr Chia in the pool business; he did other things for him apart from that. He would call what he did for Mr Chia “work”, because it was labour. He was not paid for this work; Mr Chia was a friend of his sister; he did work for Mr Chia and did not ask him any money; he could say that he did it as a favour. Mr Chia did a number of favours for him as well; Mr Chia gave him gifts; that is the normal employer-employee relationship. Mr Chia was his friend and a friend of his sister, so he would go to Mr Chia’s home on several occasions. There were several other persons who used to be present at Mr Chia’s home on social occasions; he does not know what agreement Mr Chia had with them; but he knows what agreement Mr Chia had with him. There was an agreement Mr Chia had with him. The agreement they had was that Mr Chia asked him to come to assist him and he agreed. He helped Mr Chia out personally. He doesn’t know about the other persons who used to

go by Mr Chia's home. He was the only person who drove Ruthina Edwards to different areas around Antigua to collect money from the pool tables. Mr Chia would usually call him by telephone and ask him to come to take Ruthina to different areas around Antigua to collect moneys. He is a freelance taxi driver; his family would call him to driving jobs, but that is private; he would not consider himself to be their employee. He was always available to Mr Chia when he called him. He is an artist and a calypsonian; he would do his artistry, his calypsos and other driving in his leisure hours.

[15] The Defendant testified that when he said (in his witness statement) that Mr Chia paid him remuneration in gifts and favours, he meant that Mr Chia used to offer him dinner, sometimes a pants and, when he needed use of a vehicle, Mr Chia would lend him his. He reiterated that when he worked for Mr Chia he was paid nothing whatsoever, just gifts.

[16] The Defendant testified that after the land where his house and studio were located was "sold under him" and he was given permission by a friend to move them temporarily to a location in Cook's Hill, he informed Mr Chia of his situation and, in or around 1990, Mr Chia gave him permission to remain on his land. It was within that same year (1990) – whilst he was continuing to be of service to Mr Chia and his family – Mr Chia told him that he could remain on the land for his natural life for the assistance that he (the Defendant) had given to him (Mr Chia). Then he testified that after he had worked with Mr Chia for several years, as Mr Chia was coming to the end of his life after he had taken ill and realized that he might not make it, Mr Chia told him that he could stay on the land. He also testified that because of the things he did for Mr Chia, Mr Chia assisted him, rescued him, gave him permission to stay on his land and then afterwards told him that he could

stay there for the rest of his life. He testified that Mr Chia had a verbal contract with him that he could remain on the land for the rest of his life.

[17] The Defendant testified that he was very close to the Chia family and that up to now (meaning, up to the time that he was giving evidence at the trial) he is still taking care of Mrs Chia, bringing things for her. He testified that Mrs Chia knew of his life interest in the land, but he did not call her as a witness because she is handicapped.

[18] Late in his testimony under cross-examination, the Defendant said that the Claimant told him that he could stay on the land for the balance of his life and when he gets old she and her children would take care of him. He also said that, just a little after Mr Chia died, and whilst he was still doing things for the Claimant, she told him that he could stay on the land for his life.

[19] From the numerous averments and allegations contained in the statements of case and the evidence of the parties to this case, the undisputed facts which have a bearing on the outcome of this case are the following:

1. The Claimant and her daughter, Reina James, are the registered proprietors (with absolute title) of parcel 210, having acquired same by transmission from the Claimant's father, Anthony Chia.
2. The Defendant is in occupation of the whole or a portion of parcel 210 since about 1990, having been permitted to place his dwelling house thereon by the Claimant's father and predecessor in title, Anthony Chia.

3. Prior to the institution of the present proceedings, the Claimant gave the Defendant notice to quit parcel 210, but the Defendant has failed and/or refused to do so and has remained in occupation of the whole or a part of the same.

[20] The disputed issues which have a bearing on the outcome of the case can be framed in the following questions:

1. Was the Defendant an employee of Mr Anthony Chia or was he just one of several persons who assisted Mr Chia with various chores in return for gifts, favours and benefits dispensed by Mr Chia?
2. Did Mr Chia permit the Defendant to occupy what is now Parcel 210 or any part thereof as a gift, favour or benefit or by virtue of an agreement which was legally binding on Mr Chia and his successors in title to parcel 210?
3. Was the Defendant's occupation of parcel 210 or part thereof in the capacity of a tenant or a licensee of Mr Chia and his successors in title?
4. Was the Defendant's license or tenancy of parcel 210 intended to be temporary or for the remainder of the Defendant's natural life?

[21] The defining legal issue arising from the disputed and undisputed facts of this case, and on the basis of which the other legal issues would be determined, is the question of whether the Defendant's license or tenancy of the whole or a part of parcel 210 was a bare licence or tenancy terminable and terminated by the Claimant prior to the institution of these proceedings or whether it gave rise to a proprietary estoppel protecting the Defendant from its termination during his lifetime?

[22] In terms of the disputed factual issues, having considered the conflicting averments and evidence, the Court has determined that the Defendant was never an employee of Mr Anthony Chia but, from the 1970s through to Mr Chia's death in 1991, the Defendant performed various miscellaneous services for Mr Chia and Mr Chia gave various gifts, favours and benefits to the Defendant. This much is clear from the evidence of the Defendant, notwithstanding his assertions that he worked for Mr Chia, in the sense of being his employee.

[23] The Court has also determined that the permission given to the Defendant by Mr Chia to occupy the whole or part of parcel 210 did not arise from a legally-binding agreement between them but was one of the gifts, favours or benefits given to the Defendant by Mr Chia. This was clearly the position of the Claimant, while the Defendant appeared at times to be asserting that it was a legally-binding agreement and at other times conceding that the permission given to him by Mr Chia to locate his house on Mr Chia's land was a favour rendered to him by Mr Chia, motivated though it was by unrecompensed services that he had performed for Mr Chia. The Court does not consider that there was ever any legally-binding agreement between Mr Chia and the Defendant.

[24] The Court has determined too that the Defendant was a licensee and not a tenant of Mr Chia. For there to be a tenancy there must be, among other things, a rental amount and a payment period, a term, and an identified and certain item to be rented. Neither of the parties has identified either a rental amount or a payment period which could constitute a rental. As to a term, the Claimant has at one time averred or alleged that it was a yearly tenancy and at other times that it was until the Defendant got another piece of land on which to put his house. The Defendant, on the other hand, has at different times indicated that it was from the outset a life tenancy and at other times a

licence for an indeterminate term which evolved into a tenancy for life. As to the property rented, it was never clear as to whether it was intended to be the whole or part of parcel 210.

[25] The last of the disputed factual issues for determination, which merges with the defining legal issue in the case, is whether the Defendant's licence was intended to be temporary or for the remainder of his life; the Claimant insists that it was intended to be temporary (until the Defendant got somewhere else to place his house); while the Defendant insists that it was intended to be for the remainder of his natural life.

[26] The credibility of the Defendant's evidence on this issue is considerably compromised by various parts of his own testimony under cross-examination. Under cross-examination, the testified that Mr Chia rescued him by allowing him to place his house on parcel 210. Then he testified that as Mr Chia was coming to the end of his life, when he realized that he might not make it, Mr Chia told him that he could remain on the land for the rest of his (the Defendant's) natural life for the assistance that he had given to Mr Chia.

[27] It is difficult to conceive that Mr Chia, whom the Defendant testified was intelligent, was a businessman, was a person who made more than one Will disposing of his property, was aware of his imminent demise and so told the Defendant that he could remain on the land for the remainder of his (the Defendant's) natural life, yet he did not mention in any of his Wills this life interest that he had given to the Defendant (on land willed to someone else), nor did he find it necessary to at least have that grant of a life interest noted in any form or fashion, not even by a scribble on a piece of paper. The Defendant's explanation for this rather incredulous omission was that it could have been negligence on the part of Mr Chia that he never put that in writing.

[28] Then there is the fact that the Defendant testified that Mr Chia's wife, Mrs Rose Chia, knew about the life interest and that up to now he is still taking care of Mrs Chia, yet he did not call her as a witness to support his case or even to have a witness statement or affidavit put in by her in support of his case. Under cross-examination, he explained this egregious omission by testifying that she is handicapped, without any further explanation as to the nature and extent of her handicap, which term can of course refer to even the slightest of hindrances that would not prevent a person from attending and giving evidence in court.

[29] The Defendant also testified that there was someone else (one Percel) who was present when Mr Chia told him about the life interest, yet he did not call Percel as a witness or offer any explanation for not having done so.

[30] What the Court is being asked to accept, therefore, is that Mr Anthony Chia - an intelligent businessman who was very aware of the need to and was amenable to making dispositions of his property by appropriate instruments in writing - decided to give a life interest in a portion of land (which portion of land he had willed to someone else) to a long-standing friend of his who had performed various services for him for several years without remuneration, but he made no note or memorandum in writing of any sort of such a significant disposition of land, even although he was then aware of his own imminent demise. The Court, moreover, is supposed to accept this on the say-so of the Defendant, who has not brought a single witness or document to support his evidence on this, despite the fact that he identified two live persons whom he alleges were aware of the grant of the life interest to him by Mr Chia.

[31] Under the circumstances, the Court cannot accept the evidence of the Defendant of the grant to him by Mr Chia of a life interest in the whole or a part of parcel 210, and the Court prefers the evidence of the Claimant that the permission given by Mr Chia to the Defendant to place his house on parcel 210 was intended to be temporary and to subsist only until such time as the Defendant had obtained a place of his own to locate his house.

[32] The factual issues bearing on this case having been determined, the Court's task now is to examine the legal position which bears on these facts.

[33] The starting point of an examination of the legal position in this case is the Registered Land Act, Cap. 374 of the Laws of Antigua and Barbuda (hereafter "the Act"). There are three sections of the Act which are directly relevant to this case - sections 3, 23 and 28 - and it would be useful to quote verbatim the relevant portions of these sections:

"3. (1) Except as otherwise provided in this Act, no other law and no practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act ....

23. Subject to the provisions of section 27 the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever, but subject –

(a) to the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the register; and

(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register ....

28. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register – ...

(f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;

(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where enquiry is made of such person and the rights are not disclosed....”

[34] In the present case, parcel 210 – which is the subject matter of the case – is registered under the Act and so no other law and no practice or procedure relating to land inconsistent with the Act will apply to parcel 210; the Claimant and her daughter are registered with absolute title of parcel 210 and are therefore vested with the absolute ownership of the land, free of all other interests and claims whatsoever, but subject to any overriding interests subsisting and affecting the land; the overriding interests which, in the present case, can subsist and affect parcel 210 are rights acquired by the Defendant by prescription or rights acquired by him as a person in actual occupation of the land.

[35] In terms of prescription, section 135 (1) of the Act provides that – “The ownership of land may be acquired by peaceable, open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twelve years”. It is an undisputed fact that the Defendant has had his house on parcel 210, or whatever parcel it emerged from, for over twelve years between first placing it there in 1990 and the institution of these proceedings in 2010. It is arguable that the Defendant has been in “peaceable, open and uninterrupted possession” of the land for at least twelve years. It is beyond doubt, however, that the Defendant has not been in possession of the land “without the permission of any person lawfully entitled to such possession for a period of twelve years”. In fact, the Defendant’s case is founded on his having come onto the land and remained on it with the permission of the person or persons lawfully entitled to possession of it – Mr Chia, who first gave him permission to place his house on the land and permitted him to remain there for the remainder of his natural life, and then the Claimant herself who, he testified, told him “just a little after her father died” that he could stay there for life. He also testified that the Claimant told him that he could stay on the land for the balance of his life and when he gets old she and her children would take care of him. So the Defendant has maintained at all times that his occupation of the land was by the permission of the previous owner, Mr Chia, which permission was continued after the death of Mr Chia by the Claimant.

[36] Prescription does not therefore arise on the facts of this case.

[37] In terms of rights acquired by the Defendant as a person in actual occupation of parcel 210, this brings into focus the doctrine of proprietary estoppel, which was in fact called into service by the Defendant in the witness statement and closing submissions filed on his behalf.

[38] Proprietary estoppel has been variously defined by jurists (both from the groves of academe and the courts of law) but, for present purposes, I will focus on the three elements of the doctrine which both scholars and judges agree are essential to its application. The first element is a representation or assurance made to the party seeking to rely on the estoppel; the second element is reliance by that party on the representation or assurance; and the third element is detriment to that party as a consequence of his reliance on the representation or assurance.

[39] The Defendant alleges that a representation was made to him and/or an assurance was given to him by Mr Chia that he could place his house on a portion of what is now parcel 210 and that he could occupy that portion of land for the remainder of his life. He also alleges that he relied on this representation and/or assurance and placed and kept his dwelling house on parcel 210. He further alleges that his reliance on this undertaking/assurance was to his detriment in that – “Having relied on the arrangement between Mr Chia and me, I stayed at Parcel 210 without any thought of acquiring separate property for myself.”

[40] The doctrine of proprietary estoppel cannot however avail the Defendant in this case. Not only does the Defendant have the difficulty of overcoming or circumventing the Court’s rejection of his averments and allegations of a grant to him by Mr Chia of a life interest in the whole or part of parcel 210, but he also has the consequential difficulty of establishing his reliance on a representation or assurance by Mr Chia which the Court does not believe was ever made or given to him, and worse, far from establishing any detriment to him occasioned by his reliance on a representation or assurance by Mr Chia to place and keep his house on parcel 210, the evidence is that the Defendant has benefited immensely from being “rescued” by Mr Chia when he had no place to put his house and studio and from having had the use of this house spot rent free for some

twenty-two years now. Indeed, it would be very difficult to discern any detriment to the Defendant flowing from such good fortune,

[41] In the circumstances, therefore, the Court finds that no proprietary estoppel exists in this case for use by the Defendant as a shield or a sword to prevent his eviction from parcel 210 on the basis of a life interest claimed by him.

[42] The Court however finds that the Claimant and her predecessors in title permitted the Defendant to remain on the land and/or acquiesced in his remaining there for at least sixteen years (from 1990 to 2006) before any attempt was made to terminate his license to do so. According to the Claimant herself (at paragraph 15 of her witness statement): "The Defendant had had the permission of the family to remain on the land in return for tasks done up until 2006 when he refused to accept any formal lease." The Claimant's documentary evidence, however, extends this period by a further three years, because it was not until April 2009 that a notice to quit was given to the Defendant to deliver up possession to the Claimant on 1<sup>st</sup> June 2009. In these circumstances, it would be inequitable to simply order the Defendant to vacate forthwith the land on which he has and has had his home and place of business for some twenty-two years, when it was only in 2009 (nineteen years after he was put in occupation of the land) that he was first served with notice to vacate the land.

[43] The Court will accordingly award to the Defendant a right of first refusal to purchase parcel 210 at its assessed value (if the Claimant is desirous of selling the land) or to vacate the land within six months of today's date (if the Claimant is not desirous of selling the land).

[44] The Defendant shall pay to the Claimant a nominal rental of \$100 per month from the 26<sup>th</sup> day of August 2012 and on or about the 26<sup>th</sup> day of every month thereafter until he shall have purchased or vacated the aforesaid land.

[45] The Claimant's claim for damages and costs is denied.

[46] The Defendant's counterclaim for damages, interest and costs is also denied.

[47] The parties to this case shall each bear his or her own costs.

[48] The following cases were cited by Counsel and considered by the Court:

By Counsel for the Claimant –

1. Inwards v Baker [1965] 1 All ER 446
2. Nicholas Lansiquot v Ignatius Leon et al – Saint Lucia Civil Appeal No. 29 of 2005
3. Cherry Cabral v Alice Robinson King – Belize Civil Appeal No. 4 of 1994
4. Frazer v Walker [1967] 1 All ER 649

By Counsel for the Defendant –

1. Commissioner of Stamp Duties (Queensland) v Livingston [1965] AC 694
2. Crabb v Arun District Council [1976] 1 Ch. 179
3. Gillett v Holt [2001] Ch 210
4. Henry and Mitchell v Henry [2010] UKPC 3
5. Thorner v Major [2009] 1 WLR 776.

[49] The Court also considered the following cases not cited by Counsel:

1. Re Basham [1986] 1 WLR 1498
2. Pascoe v Turner [1979] 1 WLR 431
3. Taylor Fashions Ltd v Liverpool Trustees Co. [1982] 1 Q.B. 133
4. Knowles v Knowles [2008] UKPC 30
5. Sledmore v Dalby (1996) EWCA 1305.

**Mario Michel**  
High Court Judge