

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV 0043/2008

BETWEEN:

SYLVANIE CONNOR

KEITHLEY HODGE

(as Administrators in the Estate of Albert Alfred Hodge, deceased)

Claimants/ Counter Defendants

And

ILEEN HODGE-RICHARDSON

(Administrator of the Estate of Albert Hodge, deceased)

Counter Claimant/Defendant

**Appearances:**

Ms. Jenny Lindsay for the Defendant/Counter Claimant

Mr. Thomas Astaphan and Ms. Navine Fleming for the Claimants/Counter Defendants

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2012: May 7, 8  
June 20  
August 27  
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**JUDGMENT**

**Introduction**

- [1] **BLENMAN, J:** Mrs. Ileen Hodge-Richardson (hereafter Ileen) has filed a counterclaim against her sister Mrs. Sylvanie Connor (hereafter Sylvanie) and her brother Mr. Keithley Hodge (hereafter Keithley). Ileen seeks a number of reliefs including a declaration that she is the proprietor of

Registration Section West End, Block 18011B, Parcel 201. She also asks the court to order the Registrar of Lands to rectify the land register in relation to Parcel 201 in order to reflect that she is the proprietor.

[2] Ileen also seeks a permanent injunction against Sylvanie and Keithley to restrain them from threatening, harassing or abusing her. She also seeks an Order of the court to restrain them from trespassing on Parcel 201, which she says belongs to her.

[3] Her counterclaim is strenuously resisted by Sylvanie and Keithley. They say that she is not entitled to the reliefs that she seeks since she is not the proprietor of Parcel 201. Sylvanie and Keithley also deny that they have threatened or harassed Ileen. Further, they say that they have not trespassed on Parcel 201 since it belongs to their father Albert Alfred Hodge's estate.

### **Issues**

[4] The issues that arise for the court to resolve are as follows:

- a. Whether Parcel 201 is the property of Ileen.
- b. Whether Ileen has an overriding interest in relation to Parcel 201.
- c. Alternatively, whether or not Ileen has a proprietary right over Parcel 201.
- d. Whether the injunction that was against Sylvanie and Keithley should be continued.
- e. Whether the court should award costs.

## Background

- [5] Ileen, Sylvanie and Keithley are all siblings. This is a typical family feud over property. It has caused what appears to have been a fairly harmonious relationship to be ruptured, primarily due to the haphazard distribution of an estate.
- [6] Ileen contends that certain lands including Parcel 201 forms part of the estate of her grandfather Robert Benjamin Hodge, deceased. Her uncle, Henley Austin Hodge, deceased (hereafter Uncle Aus) was the Administrator of the Estate.
- [7] Ileen says that she resided abroad for several years. She wanted lands upon which to build her house and at the urgings of Sylvanie and Keithley she had discussions in this regard with her Uncle Aus. Ileen claims that based on representations that her Uncle Aus made to her when he told her the portion of land was earmarked for Uncle Eldred Hodge, (Uncle Red) as Uncle Aus recommended, she spoke with Uncle Red. As a consequence of these discussions, she was led to believe that the land would be hers. She says that she caused the land to be cleared in 1990 in order to stake her claim to the land. The same land was thereafter developed by her. The portion of land originally formed part of registered Parcel 108. It subsequently became known as Parcel 201. What later became known as Parcel 201 was a portion of land identified and earmarked for Uncle Red. It was Uncle Aus who pointed out the portion of land to her, which later became Parcel 201.
- [8] Ileen claims to be entitled to Parcel 201 and she alleges that her sister Sylvanie and brother Keithley have trespassed on her property. In addition, she alleges that they have threatened and harassed her. She therefore seeks a number of declarations against them.
- [9] She says that Uncle Aus, as the Administrator of the Estate of Robert Benjamin Hodge, deceased, was tasked with the responsibility of dividing up her grandfather Robert Benjamin Hodge's Estate. He also subdivided other land in other areas. Ileen says that that portion of land (Parcel 201) was pointed out to her by her Uncle Aus. She said Sylvanie and Keithley also told her about the portion of land (Parcel 201) which was earmarked for Uncle Red and he gave her the land.

- [10] Ileen says that her father Albert Alfred Hodge, who died subsequent to Robert Benjamin Hodge, deceased, was entitled to benefit from the latter's estate. She claims that Henley A Hodge (hereafter Uncle Aus) was the Administrator of the Estate of Robert Benjamin Hodge, deceased. Ileen says that she discussed the lands in question with her Uncle Aus and Uncle Red, who together with her deceased father, Albert Alfred Hodge, were also the lawful heirs of Robert Benjamin Hodge's Estate.
- [11] Ileen claims that Uncle Aus told her that Parcel 201 was earmarked for his brother Eldred Hodge (Uncle Red). Uncle Aus further told her that if she wanted to build on the parcel of land, she needed to obtain the consent of her Uncle Red. She says that she spoke with Uncle Red and obtained his permission to build on the land. This was around 1990.
- [12] Ileen thereafter told Keithley and Sylvanie that her Uncle Red had given her the parcel of land that was earmarked for him and they were elated. She caused the parcel of land to be cleared. Keithley assisted her husband in clearing the land. Her father died on 1<sup>st</sup> May 1974 and was survived by thirteen children and the parties' mother, the latter who is now also deceased.
- [13] Ileen states that she has been in possession of Parcel 201 since 1990 and since 1999 she has been in actual occupation of the land and has therefore obtained rights to the property.
- [14] Ileen said that she was encouraged also by her siblings Sylvanie and Keithley to construct her house on the land, which she did.
- [15] She says that she started the construction of her home in 1992 and finished the construction of her home around 2000. Prior to that, she and her husband had moved into the downstairs apartment which they had constructed. All that time the relationship between herself and her siblings Sylvanie and Keithley continued to be harmonious. Ileen says that, however, a dispute arose between Keithley and herself in connection with a totally unrelated matter and this caused the animosity between herself and her siblings. She complains that serious threats were made to her life and that of her husband's by Sylvanie and Keithley. In addition, she says that Sylvanie and her son,

Mr. Lanston Connor, and Keithley have trespassed on the land which forms the lawn to her property.

- [16] Ileen asserts that she is the proprietor of Parcel 201. As an alternative position, Ileen asserts that she has an overriding interest in the entire Parcel 201 by virtue of her actual possession of the property for in excess of 16 years and seeks to have the court so declare. She also seeks the court's intervention so that she could be declared the registered owner of Parcel 201 on the basis that with the encouragement and acquiescence of Sylvanie, Keithley and her Uncle Aus, she expended her life savings and constructed her home on Parcel 201. She therefore says that Sylvanie and Keithley are estopped from denying that she owns the entire Parcel 201. She complains that she has also cultivated a garden and planted trees on the land which Daphne and Keithley have destroyed.
- [17] It was against that background that Sylvanie obtained an interim injunction preventing Sylvanie and Keithley from trespassing on Parcel 201. She also obtained an order which restrained them from threatening and harassing her. Also, she says that she fears that Keithley and Sylvanie would continue to harass, threaten and abuse her unless the court grants her a permanent injunction to restrain them from doing so.
- [18] Sylvanie and Keithley deny that Ileen is entitled to the entire Parcel 201 she claims. They say that she is only entitled to piece of land upon which her house is constructed. Also, they deny that they have trespassed upon her property or harassed or threatened her. Sylvanie and Keithley say that the entire Parcel 201 belonged to their father Albert Alfred Hodge's Estate.
- [19] Sylvanie and Keithley oppose Ileen's counterclaim. They say that Parcels 201 and 202 form part of their father's estate. The original parcel was 108. It was later subdivided into three (3) parcels and became Parcels 201, 202 and 203. They say that the evidence indicates that Parcel 201 belong to the Estate of Albert Alfred Hodge. While Uncle Aus who was the Personal Representative of their grandfather's Estate (Robert Benjamin Hodge, deceased) he transferred ownership of Parcel 201 into Albert Alfred Hodge's Estate in 2003. Sylvanie and Keithley say that Uncle Aus had no

authority to promise or give Ileen Parcel 201. They contend that Ileen occupied a portion of their father Albert Alfred's Estate, but they reiterate that it was not with Uncle Aus's permission.

- [20] They assert that Ileen is not entitled to any of the reliefs which she seeks.
- [21] In their pleadings, Sylvanie and Keithley said that even though Ileen was given permission to occupy Parcel 201, it was not the entire parcel. They therefore asserted that Parcel 201 upon which Ileen has built her home, should be further subdivided and that she is entitled to only the portion of Parcel 201 upon which her house is built.
- [22] They deny that Uncle Aus gave Ileen the entire portion of Parcel 201 that was earmarked for him. In their view, Parcels 201, 202 and 203 belonged to their deceased father, Albert Alfred Hodge's Estate.
- [23] At the beginning of the trial and in their pleadings, Sylvanie and Keithley took the view that Ileen is only entitled to the portion of Parcel 201 on which her home is built together with reasonable yard space. They maintained that Parcel 201 belong to their father's Estate, Albert Alfred Hodge's Estate. During the cross-examination of Sylvanie, it was clear that Sylvanie and Keithley did not accept that their Uncle Aus, who was the Administrator of their grandfather's estate, had the authority to give Parcel 201 or any portion of it to Ileen. This is in contradistinction to the position which they had taken in their respective evidence and initial written submissions namely that, if at all, Uncle Aus, with Uncle Red's permission, only gave Ileen a portion of Parcel 201. They had initially asserted that at no time was she given the entire Parcel 201. In fact, it is unclear whether at the conclusion of the evidence they had resiled from the position that Uncle Red gave permission to Ileen to build her house on a portion of Parcel 201 together with reasonable yard space.
- [24] Both Sylvanie and Keithley say that they had both pointed out to Ileen the portion of land upon which to build. They deny that it was earmarked for Uncle Red. They maintain that Ileen is not entitled to occupy the entire Parcel 201 since it belonged to their now deceased father.

- [25] They admit that in accordance with the practice in Anguilla, Ileen and Keithley built their homes on portions of their father's property prior to any sub-division and transfer being done, in accordance with law.
- [26] Alternatively, Sylvanie and Keithley state that even if Uncle Red was in a position to give Ileen permission to build on the land and did indeed gave her permission, this was only in relation to a portion of Parcel 201. In this regard, they seek to rely on an affidavit sworn to by Uncle Red in January 2003 in which it is stated that Ileen was given the portion of land upon which her house is built together with reasonable yard space.
- [27] As alluded to earlier, the position adopted by Sylvanie and Keithley seemed to have been changed during the trial. In particular, during cross-examination. The thrust of their cross-examination was that Ileen was not entitled to occupy even the portion of land upon which her house is situate since Albert Alfred Hodge's Estate had not been distributed and the entire land belongs to that estate.

### **Evidence**

- [28] Mrs. Ileen Richardson-Hodge, Mr. Charles Richardson, Mr. James Richardson and Mr. Cleveland Richards testified in support of the counterclaim. Mrs. Sylvanie Connor, Mr. Keithley Hodge and Mr. Daphne Connor provided evidence in opposition to the counterclaim.

### **Submissions on behalf of Sylvanie and Keithley**

- [29] Learned Counsel Ms. Fleming reminded the court that Ileen, in her counterclaim, says that she was owner of Parcel 201 by virtue of a promise made to her by the parties' Uncle Eldred Hodge (Uncle Red) that he would give her the property. Further, Ileen requested that an order be made that she has an overriding interest in the Estate of Robert Benjamin Hodge (her grandfather) as a result of her sixteen years occupation of Parcel 201 with the permission and knowledge of the beneficiaries of the lands, which has been registered in her father Albert Alfred Hodge's Estate's name since 2003 and that the injunction granted against Sylvanie and Keithley on the 29<sup>th</sup> day of October 2010 should continue.

- [30] Learned Counsel Ms. Fleming said that Ileen called four witnesses, herself included. Ms. Fleming said of Sylvanie and Keithley that the only evidence which could have rendered some assistance to this court was that of Ileen's. During evidence in chief, Ileen told the court of her return to Anguilla after a number of years having resided out of the jurisdiction. She went on to give evidence of her conversations with Henley A. Hodge (Uncle Aus), the Administrator of the Estate of Robert Benjamin Hodge (her grandfather), about her desire to build on family property and was told that the area in which she wanted to build had been "earmarked" for Eldred Hodge (Uncle Red). She also gave evidence of her conversation with Uncle Red about building on the spot, which he gave her; this was the area he did not want in the "Well Ground". Ileen said that she received encouragement from Keithley, in particular, to build on family land which eventually became Parcel 201.
- [31] Ms. Fleming said that under cross-examination Ileen admitted that Uncle Aus did not own the lands for which he was Administrator but was in charge of distributing them.
- [32] Learned Counsel Ms. Fleming submitted that the principle of "nemo dat quad no habet" continues to apply with respect to Ileen's claim and that she is not entitled to Parcel 201 as a result of the alleged promise made to her by Uncle Red. Ms. Fleming referred the court to the pronouncements of Justice Redhead in HCVAP 2008/020 *Robertson v King et al.* Learned Counsel Ms. Fleming submitted that as Administrator of the Estate of Robert Benjamin Hodge, Uncle Aus stood in the position of a trustee, thereby holding the property of the deceased on a statutory trust for the beneficiaries of the estate. The interests held for the issue of the deceased is in the net value of the estate and not in the title of the property to claim ownership of same. However, Ms. Fleming conceded that it has become a practice of persons in the Hodge's family to distribute the property and not monetary value of same to the beneficiaries.
- [33] Ms. Fleming referred to Section 3 of the Intestates Estate Act R.S.A. c130 which provides for the succession of the beneficiaries to an Intestates Estate, also to Section 4 which provides for the holding of the residuary estate of an intestate on a statutory trust for the issue and other relatives of the intestate.

[34] Ms. Fleming also referred the court to Section 5 of the Intestates Estate Act R.S.A c130 which provides the meaning of "Statutory trusts". The section states:

*"For the purposes of this Act, the residuary estate of the intestate, or any part thereof, directed to be held upon the "statutory trusts' shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits."*

[35] Ms. Fleming therefore submitted that in accordance with the above provisions that at no time was Uncle Aus legally in a position to earmark a particular portion of land for Uncle Red as the latter's interest was only in the net value of the proceeds of any sale of the estate's assets.

[36] Next, Ms. Fleming advocated that based on Ileen's own evidence, both through her affidavits and oral evidence of encouragement and permission by the beneficiaries of the two estates being that of Robert Benjamin Hodge and Albert Alfred Hodge, it negates the argument that she fits the criteria of a person occupying Parcel 201 in an adverse position as provided for by section 135 of the Registered Land Act RSA R30. In support of her argument, Ms. Fleming placed reliance on the learning found in HCVAP 2008/020 *Robertson v King et al* ibid.

[37] Learned Counsel Ms. Fleming submitted that in all of the circumstances, that Ileen has failed to prove her claim in that she has failed to defeat the indefeasibility of the title of her father Albert Alfred Hodge, deceased, as the registered proprietor of the property. She has admitted to having permission of, and encouragement by the beneficiaries of both the Estates of Robert Benjamin Hodge, deceased, and Albert Alfred Hodge, deceased, to occupy that portion of the undivided family property which she occupied as a beneficiary. Ileen cannot claim an adverse right to or overriding interest in her father's estate with respect to Parcel 201.

[38] In the circumstances, Ms. Fleming urged the court to dismiss Ileen's counterclaim and asked the court to find in favour of Sylvanie and Keithley and thereby declare that Parcel 201 is the property of the Estate of Albert Alfred Hodge as evidenced by the Land Register. She also urged the court

to make an order removing the Restraining Order dated 29<sup>th</sup> October 2001 so that the Estate of Albert Alfred Hodge can be finally administered.

- [39] Finally, Ms. Fleming implored the court to award costs against Ileen in her personal capacity in the sum of EC\$50,000.00 as provided for by the Civil Procedure Rules 2000 Part 65.5 (2) (iii).

#### **Submissions on behalf of Ileen**

- [40] Learned Counsel Ms. Jenny Lindsay submitted that Ileen has an overriding interest in Parcel 201. She urged the court to accept that Ileen has been in actual possession of Parcel 201 since 1990 and thereafter, in 1999, in actual occupation of the land since Ileen had built her home on the land in which she resides. Ms. Lindsay asked the court to accept Ileen's evidence that she was put in possession of the land which became known as Parcel 201 by Uncle Aus who was the Administrator of Robert Benjamin Hodge's Estate, and that this was done with the consent of Uncle Red for whom the parcel of land was earmarked. Learned Counsel Ms. Lindsay also urged the court to accept that Sylvanie and Keithley encouraged Ileen to return to Anguilla and build her home. Uncle Aus pointed out to her where she should build and recommended that she should seek the permission of Uncle Red to build on the portion of land that was earmarked for Uncle Red.
- [41] Ms. Lindsay said that the court should accept Ileen's evidence which is reliable and uncontroverted, that both Sylvanie and Keithley encouraged her to build on the portion of land after she had received Uncle Red's permission to do so.
- [42] Ms. Lindsay referred the court to the Privy Council decision of *Commissioner of Stamp Duties v Livingston* [1964] UKPC 2 in which it was held that:

*"whatever property came to the executor virtue officii came to him in full ownership, without distinction between legal and equitable interests. The whole property was his. He held it for the purpose of carrying out the functions and duties of administration, not for his own benefits and these duties would be enforced upon him by the Court of Chancery."*

[43] Ms. Lindsay therefore argued that Uncle Aus was clothed with the authority to distribute the Estate of Robert Benjamin Hodge in the way he did. Importantly, Ms. Lindsay said that Uncle Aus acted quite properly in giving Ileen the parcel of land with the consent of the beneficiaries, since Uncle Red for whom the parcel was earmarked had agreed for Ileen to have it.

[44] Relying on Section 28(f) of the Registered Land Act in the Laws of Anguilla, Ms. Lindsay said that all registered land shall be subject to the following overriding interests as may for the time being subsist and affect it, without being noted on the register:

*“rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription.”*

[45] Learned Counsel Ms. Lindsay therefore urged the court to find that Ileen acquired title to Parcel 201 by prescription since she was in possession of the land since 1990. Her interest in the land, argued Ms. Lindsay, is an overriding one. In support of her submission, Ms. Lindsay referred the court to ***Kenneth Mc Kinney Higgs v Nassauvian Ltd PC***. Further, Ms. Lindsay submitted that insofar as Ileen has been in possession and occupation, at the very least, of a part of Parcel 201 for in excess of 12 years, no action can be lawfully brought to recover that part of the land from her. Ms. Lindsay referred the court to sections 5 (3), 6(3) and 7(3) of the Limitation Act of the Laws of Anguilla in support of this argument.

[46] Ms. Lindsay, nevertheless, reiterated that the credible evidence clearly indicates that Ileen was in actual possession of the entire Parcel 201 for in excess of 12 years, in fact for nearly 22 years at the date of trial and not only a portion of the parcel.

[47] Alternatively, Learned Counsel Ms. Lindsay said that Sylvanie and Keithley should be prevented from asserting any rights they have as the beneficiaries, if at all, in relation to the entire Parcel 201. The equitable principle of proprietary estoppel would arise to prevent them from insisting on their strict legal rights. Ms. Lindsay maintained that Sylvanie, Keithley, Uncle Aus and Uncle Red encouraged and acquiesced in Ileen's building of her home on Parcel 201. Acting on their acts of encouragement and acquiescence, Ms. Lindsay said that Ileen expended her life's savings to build

her home on Parcel 201. Ms. Lindsay said that Sylvanie and Keithley has very belatedly started to take an interest in Parcel 201 because Sylvanie wants to give her son Lanston Connor a portion of Parcel 201 to build a restaurant.

[48] Learned Counsel Ms. Lindsay urged the court to accept Ileen's evidence that her Uncle Red gave her the entire portion of land that was earmarked for him. Counsel asked the court not to accept Sylvanie and Keithley's evidence that Ileen occupied only a part of Parcel 201 and that it was understood that the entire Parcel 201 belonged to their deceased father Albert Alfred Hodge. Ms. Lindsay said that, at the very least, Ileen obtained title to the parcel by virtue of proprietary estoppel. In relation to proprietary estoppel, Learned Counsel Ms. Lindsay relied on *FBO 2000 (Antigua) Limited v Bird Jnr* Civil Appeal No. 30 of 2003 Antigua and Barbuda, which addresses the well-known principles of proprietary estoppel.

[49] Ms. Lindsay said that the court should accept Ileen's evidence that Uncle Aus, with the permission of Uncle Red who was the beneficiary of that portion of land and for whom the land was earmarked, gave her the land. This, counsel said is corroborated in his affidavit of 9<sup>th</sup> January 2003. Even though Ileen does not agree that she was given only a part of the portion of land (which eventually became known as Parcel 201) together with reasonable yard space, Ms. Lindsay urged the court to accept that Ileen was never told about being given a portion of Parcel 201 together with reasonable yard space when Uncle Red gave her his portion. It was his entire portion he gave her. The whole notion of reasonable yard space arose only in 2003. Ms. Lindsay said that the uncontroverted evidence is that the Administrator of the Estate Uncle Aus, Uncle Red, Sylvanie and Keithley, they all encouraged and acquiesced in Ileen building her home on Parcel 201 in the belief/expectation that it was given to her.

[50] Learned counsel Ms. Lindsay submitted that in order for Ileen to be able to successfully rely on the principle of proprietary estoppel she is obliged to establish:

(a) acquiescence and encouragement by the beneficiaries or land owner;

(b) detriment – namely, that she acted to her detriment in relation on the representations that were made to her; and

(c) unconscionability. Ms. Lindsay stated that this need not be in the conduct of the representor in permitting the representee to assume it could act as it did; it is enough if, in all the circumstances, it is unconscionable for the representor to go back on the assumption which it permitted the representee to make. This requirement is satisfied if it would be unconscionable to deny the appellant the right to the benefit it expected to receive.

See *FBO 2000 (Antigua) Ltd. v. Bird Jr.* ibid

[51] Ms. Lindsay also referred to *Henry v. Henry*, a decision of the Court of Appeal of the Eastern Caribbean, in support of her submission that Sylvanie and Keithley would be estopped from denying Ileen's interest in Parcel 201. *Henry v. Henry* concerns a dispute over an undivided half interest in a piece of land held by Geraldine Pierre, now deceased. During her lifetime, Geraldine Pierre granted the appellant's grandmother permission to build on the land where she lived with the appellant for some 30 or 40 years until her death. The appellant had continued to live on the land; Geraldine Pierre promised to leave the land to the appellant on her death on the condition that he continued to work the land. Shortly before her death in 1999, Geraldine sold her undivided half share in the land to the first respondent. The appellant claimed to be the rightful owner and/or to have an overriding interest in the land and sought a declaration to that effect. The claim was dismissed. The appellant appealed against the decision. Applying the principles of the proprietary estoppel, the Court of Appeal allowed the appeal and declared that the appellant was the owner of the land.

[52] Ms. Lindsay posited that there was consistency between Ileen's evidence and what Uncle Aus did in 2003 when he subdivided the lands which form the Estate of Robert Benjamin Hodge, deceased. Indeed, he divided the lands into three Parcels: 201, 202 and 203. However, counsel said that it is clear that Uncle Aus made a mistake when he caused Parcel 201 to be registered in the name of the Estate of Albert Alfred Hodge instead of Parcel 203. It was clear that Parcel 201 was already in occupation by Ileen when the registration was effected in 2003. Ms. Lindsay therefore urged the court to make an order for the rectification of the Land Register in order to have it reflect that Ileen

is the proprietor of Parcel 201. Learned Counsel Ms. Lindsay advocated that equity should step in to do justice between the parties. Ms. Lindsay posited that the minimum equity to do justice is to order the rectification of the Land Register in order to reflect that Ileen is the owner of Parcel 201. In support of her argument, Ms. Lindsay referred to *Howard v Munroe* 2006. In that case the Court of Appeal dealt with the issue of the minimum equity to do justice to the respondent who established a claim to proprietary estoppel against the estate.

- [53] Finally, Ms. Lindsay said that it should be evident to the court that the interlocutory injunction that was granted should be made permanent. Counsel said that the cogent evidence indicates that unless Sylvanie and Keithley are permanently restrained, they would continue to trespass and harass Ileen. In addition, they would continue to trespass on Parcel 201 and to encourage other persons to do so in the hope of intimidating Ileen to leave Parcel 201. This was all in the hope that Sylvanie's son Lanston could acquire a portion of Parcel 201 on which to construct commercial properties. Learned Counsel Ms. Lindsay referred the court to decisions of this court in which permanent injunctions were granted namely: *Clarabel Investments Ltd et al v Antigua Isle Company Limited* ANVHCV2006 136; *Michael v Hutcheus* ANUHCV 2004 No.298.

### Court's Analysis and Conclusion

- [54] I have reviewed the evidence that was adduced in this case and given deliberate consideration to the very helpful submissions of learned counsel.
- [55] I have no doubt that much of this case turns on the credible evidence that was adduced in the trial. In this regard, the witnesses whose evidence were accorded the majority of attention are Ileen, Charles, Sylvanie, Keithley and Daphne since they have personal knowledge of the matters that are material to the case at Bar.
- [56] Charles was a very honest and objective witness; Ileen was also a very credible and straightforward witness who was very truthful; her evidence was very reliable. I am afraid that I cannot say the same for Sylvanie, Keithley and Daphne. In fact, all three of these witnesses did not paint a good picture under cross-examination. I am not of the view that they were very credible. Of

all of them, however, Keithley and Daphne, in my view, were the least credible. While Sylvanie was respectful and mild mannered, I have no doubt that she is the main actor behind most of the confusion. Also, she was not as candid with the court as she could have been and sought to deny the fact that she was instrumental in having her son take trucks to Parcel 201 in order to do construction there. As a consequence, where there is conflict between Ileen's evidence and that of Sylvanie, Keithley and Daphne, I attach more weight to Ileen's evidence. I also believe Ileen that Lanston Connor has also threatened her and I accept her uncontroverted evidence that Sylvanie wants to give her son Lanston a portion of Parcel 201.

[57] Daphne, who testified on behalf of Sylvanie and Keithley, struck me as a person who is a bit of a troublemaker. I believe Ileen when she told the court of the unpleasant things that Daphne said to her. It is clear to me that she did indeed assist Keithley to cut down the trees that Ileen had planted upon Parcel 201.

[58] In relation to Keithley, during cross-examination, it became clear that he is quick tempered and argumentative. He struck me as being very angry. I believe Ileen when she said that he drove the jeep into the yard and that on several occasions he abused and threatened her. Equally, I accept that she has had to seek the police's intervention. I have no doubt that had it not been for the interim injunction which the court has granted Keithley would have continued to threaten and harass Ileen.

[59] Be that as it may, one thing is clear is that this is a very unfortunate family dispute in relation to an estate that was not properly administered, rather as is customary, the personal representative has sought to distribute the Estate of Robert Benjamin Hodge and has in an informal manner given lands that belong to the estate, to various beneficiaries. The parties have all accepted that there is a longstanding family practice of informally distributing the assets of estates. It however does not negate the fact that this practice has led to serious confusion between the family which has only recently raised its head and which has caused a very closely knit family to become fractured. It may well be that this method of distribution could be excused since the Administrator of the Estate was very elderly. I accept that when Uncle Aus departed this life in 2003 he was 97 years old. Perhaps the responsibility of an administrator ought to have been given to a younger person.

- [60] The following represents my findings of facts.
- [61] Robert Benjamin Hodge died leaving property in West End which is situated at Well Ground Land and better described as Registration Section West End, Block 18011, B Parcel 108. Originally, it was known as Parcel 48 and later became Parcel 108. The property subsequently became known as Parcels 201, 202 and 203. The Administrator of the estate was Uncle Henley Austin Hodge known as Uncle Aus. The property was registered in his name as the Administrator of Robert's Estate. I accept that the beneficiaries of the Estate were Uncle Aus, Uncle Eldred (Uncle Red) and Albert Alfred Hodge, deceased. Equally, I accept that Uncle Aus purported to divide the Estate of Robert Benjamin Hodge between himself, Uncle Red and Albert Alfred Hodge, the latter who was the parties' father. The land was earmarked as follows: Uncle Red Parcel 201, Uncle Aus Parcel 202 and Albert Alfred Hodge Parcel 203. The overwhelming credible evidence that was adduced indicate that both Keithley and Sylvanie were aware of the distribution and informal division of the Estate of Robert Benjamin Hodge by Uncle Aus and never objected to the distribution.
- [62] I accept also that Keithley got permission from Uncle Aus to build on Parcel 203; also, that one of Sylvanie's son's lives in the family house that is situated on another part of Parcel 203. I do not believe that the entire Parcel 108, which later became Parcels 201, 202 and 203, was earmarked for their father Albert Alfred Hodge, deceased, as Sylvanie and Keithley would have me believe. The cogent evidence is inconsistent with this position advanced by Keithley and Sylvanie. There is no doubt that both Sylvanie and Keithley, together with Uncle Aus and Uncle Red led Ileen to believe that it was fine for her to construct her home on Parcel 201. Further, Uncle Red, acting in the belief which was also held by Uncle Aus that Parcel 201 belonged to him, permitted Ileen to build on Parcel 201. I have no doubt that Uncle Red "gave" Ileen the parcel of land upon which to build her home. It is clear that at the time of this gifting the parcels of land had not been divided, they were only "earmarked" for the beneficiaries.
- [63] It is important that I state that Sylvanie and Keithley have benefitted from the unorthodox administration of the Estate of Robert Benjamin Hodge by Uncle Aus, and about which they now complain. It is clear that the estate was subdivided and/or allocated to the beneficiaries even though the legal requirements have not been complied with.

- [64] In passing, I state it is a bit curious, to say the least, that Keithley and Sylvanie's son are occupying various portions of the Estate Robert Benjamin Hodge namely, the family house on Parcel 203, and the portion of land on which Keithley has built on Parcel 203; yet another one of Sylvanie's son Lanston wishes to have a portion of Parcel 201. All of this is happening while Sylvanie and Keithley in their closing arguments say that Ileen has no right to any part of Parcel 201.
- [65] There is no doubt that with the encouragement and acquiescence of Sylvanie and Keithley, Uncle Red and Uncle Aus gave Ileen permission to build her home on Parcel 201 and this was accepted by Sylvanie and Keithley who are also the beneficiaries of their father's estate. In fact, both Sylvanie and Keithley encouraged Ileen to seek Uncle Aus's permission to build on Parcel 201 which she did. Having been given the land since early 1990's, Ileen commenced constructing her home on Parcel 201 and has lived in that home from 2000. I have no doubt that Ileen was given the entire Parcel 201 and not an amorphous portion of Parcel 201, as Sylvanie and Keithley alleged. Once Uncle Aus had given her the land, with the agreement of Uncle Red, Keithley even assisted her to clear it so as to stake her claim in it. During the construction of the home, the relationship between the parties was harmonious. I have no doubt that Uncle Aus, Uncle Red, Sylvanie and Keithley initially had no objection to Ileen constructing her home there. In fact, Ileen lived with Keithley for several years while her home was being constructed and she seemed to have been very close with Sylvanie.
- [66] There was a subsequent falling out between the parties.
- [67] In 2003, and for some reason, which is unclear, Uncle Aus transferred Parcel 201 into the name of the Estate of Albert Alfred Hodge even though Ileen had already built her home on it and was living in her home.
- [68] It is passing strange that Parcel 203, though identified by Uncle Aus for Albert Alfred Hodge, has not been transferred into the name of the Estate of Albert Alfred Hodge. This would seem to be a mistake since both Keithley and one of Sylvanie's sons have been in open occupation of this parcel of land for several years.

- [69] It bears stating that the very informal manner in which the Estate of Robert Benjamin Richardson is dealt with has led to the dispute which has now emerged, most of which could have been avoided if the correct procedures were adopted.
- [70] I reiterate that it is equally clear that Sylvanie and Keithley actually encouraged Ileen to construct her home on Parcel 201 and they now seek by way of the cross-examination and in their closing submissions to assert that she was not lawfully entitled to do so. The thrust of the cross-examination by Learned Counsel Mr. Astaphan was to the effect that Uncle Aus had no authority to give Ileen any land. Even though, in their pleaded case, Sylvanie and Keithley had indicated that there was no objection to her building her home on the portion of land. They maintain, however, that Parcel 201 belonged to their deceased father, Albert Alfred Hodge. This is interesting since in the entire pleadings both Sylvanie and Keithley seemed to have accepted that Ileen was entitled to, at the very least, a portion of Parcel 201. They, however, maintain that Parcel 201 belongs to their father, Estate of Albert Alfred Hodge. There is no clear indication as to the basis upon which Sylvanie and Keithley are contending that Ileen is entitled to only a portion of Parcel 201.
- [71] Let me say straight away that I am convinced that the entire parcels of land belonged to Robert Benjamin Hodge and upon his death vested in his estate. Uncle Aus, the Administrator of the Estate, in keeping with the family's practice, distributed the assets which form the estate including what is now known as Parcels 201, 202 and 203.
- [72] I have no doubt that Ileen, in reliance of her Uncle Red's promises and with her siblings Sylvanie and Keithley's encouragement, built her home on Parcel 201. Also, there is no doubt that from the time Ileen built on the property in the 1990's until around 2003 there was no objection by Sylvanie and Keithley.
- [73] I accept as true that throughout the years, the practice within the Hodge's family was not to distribute the estate based on the value of the land. It is clear that the estate was distributed between the beneficiaries and accepted by them without paying any regard to the value of the

respective parcels of land. I have no doubt that Sylvanie and Keithley newly found insistence on their strict legal rights is to facilitate Sylvanie giving her son Lanston part of Parcel 201.

- [74] There is overwhelming evidence before the court that Keithley in particular did everything in his power to force Ileen to leave the land. There is no doubt that he is a gentleman who is not to be trifled with. In fact, he painted an interesting picture in the witness box under cross-examination by Learned Counsel Ms. Lindsay. He was hostile and bordered on being rude to counsel. In fact, as alluded to earlier, I am convinced that Sylvanie with great assistance from Keithley embarked on and succeeded with a plan to harass, abuse and threaten Ileen because she has taken steps to have them restrained from accessing Parcel 201 and from threatening and harassing her.
- [75] There is no doubt that Sylvanie and her son Lanston intend to construct commercial premises on Parcel 201. This is so even though another one of her sons has had total access to the family house which belongs to Albert Alfred Hodge and which is situated on Parcel 203.
- [76] It is passing strange that in 2003 that Uncle Red was moved to state in the affidavit, that is before the court, that Ileen was only given the portion of land upon which her home is built together with reasonable yard space. To say the least, this is a very curious development and, in any event, it is unclear as to what is meant by "reasonable yard space".
- [77] It bears repeating that it is interesting that Sylvanie and Keithley had originally adopted the position that Ileen is entitled to only part of Parcel 201 but not the entire parcel. The reason for this posture lies in the fact that they say that the entire Parcel 201 belongs to their father's estate. There are several troubling aspects of this position including the lack of credible evidence which indicates the circumstances in which the property came to belong to the estate of Alfred Albert Hodge even though Parcel 201 was already occupied by Ileen. I am aware that the court cannot easily go behind the Land Register but where as, in the case at Bar, it is unclear how the property came to be placed in the name of the Estate of Albert Alfred Hodge, the court will not refrain from carefully examining the evidence.

- [78] It is clear to me that even though Sylvanie's son occupies the family home which is situated on Parcel 203, she wants to acquire a portion of Parcel 201 to give to her son Lanston. This in my view is what has caused the majority of confusion. The time has come for the parties to seek to have their father's estate distributed in accordance with law.
- [79] I have no doubt that the well-known principle of proprietary estoppel is applicable to the case at Bar. All of the elements of proprietary estoppel have been made out. See FBO 2000 *Antigua v Bird Jnr* ibid.
- [80] The clear evidence encouragement of acquiescence, by Sylvanie, Uncle Red, Keithley and Uncle Aus which led Ileen to act to her detriment in spending her funds to build her home on Parcel 201. It would be unconscionable for the court not to perfect the gift of the entire Parcel 201 that Uncle Red gave to Ileen.
- [81] The court's determination that this is a case of proprietary estoppel gives rise to consider action of the appropriate relief. Ileen has led very cogent evidence to establish her equity in the property. It is clear that Ileen was promised the Parcel 201 which was earmarked for Uncle Red and she therefore has an equity to that extent since she has acted on that promise and expended money to develop Parcel 201 and constructed her home on the parcel, all of this with the encouragement of Uncle Aus, Uncle Red, Sylvanie and Keithley.
- [82] Once the equity is established, the next step is for the court to determine the extent of the equity. It is clear to me that the justice of the case requires that the court intervenes so as to perfect the imperfect gift that was received by Ileen, with the support of Uncle Aus and the encouragement of Sylvanie and Keithley.
- [83] For the sake of completeness, let me state that the court is of the considered view that Ileen has a proprietary right to the entire Parcel 201 and not a portion of it and so declares.

## Conclusion

- [84] In view of the premises there will be judgment for Ileen Hodge-Richardson against Sylvannie Connor and Keithley Hodge. It is hereby declared that Ileen Hodge-Richardson is the proprietor of Parcel 201.
- [85] The Registrar of Lands is directed to rectify the Land Register so as to reflect that Ileen Hodge-Richardson is the proprietor of Parcel 201 of Registration Section West End Block 18011B.
- [86] It is further ordered that Sylvanie Connor and Keithley Hodge, whether by their servant's agents or whosoever, are permanently restrained from passing and re-passing on Parcel 201.
- [87] In addition, Sylvanie Connor and Keithley Hodge are restrained from abusing, cursing or in any way harassing, abusing or threatening Ileen Hodge-Richardson.
- [88] Prescribed costs are awarded to Mrs. Ileen Hodge-Richardson.
- [89] The court gratefully acknowledges the assistance of learned counsel.

**Louise Esther Blenman**  
Resident High Court Judge  
Anguilla