



[2024] JMSC Civ. 87

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

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2023CV00514**

**IN THE MATTER** of **ALL** that parcel of land part of **HAGLEY PARK PEN NOW KNOWN AS ADELAIDE PARK** in the parish of **SAINT ANDREW**, being Lot Number One and being all of the land comprised in Certificate of Title registered at Volume 1560 Folio 235 of the Register Book of Titles.

**BETWEEN**

**TOSSAINT McDONALD**

**CLAIMANT**

**AND**

**ANTHONY O'NEIL ROBINSON**

**DEFENDANT**

**IN CHAMBERS**

Mrs. Kaysian Kennedy Sherman, Ms. Simone Gooden & Ms. Allodene Groves instructed by TWP appearing for the Claimant

Mr. Patrick Peterkin instructed by PeterMc & Associates appearing for the Defendants

Heard: **March 6<sup>th</sup>-7<sup>th</sup>, 2024, May 30<sup>th</sup>, 2024 and July 30<sup>th</sup>,2024**

**Equity — Is an Oral Contract enforceable— Whether the Claimant has an equitable interest in the property — Whether the Claimant can rely on Proprietary Estoppel — Specific Performance.**

**T. HUTCHINSON SHELLY, J**

## BACKGROUND

[1] This matter concerns a dispute over a property described as all that parcel of land part of Hagley Park Pen now known as Adelaide Park in the parish of Saint Andrew, being lot numbered one and being all of the land comprised in Certificate of Title registered at **Volume 1560 Folio 235** of the Register Book of Titles (hereinafter “the property”).

## THE CLAIM

[2] On February 20<sup>th</sup>, 2023, the Claimant filed a Fixed Date Claim Form. An Amended Fixed Date Claim Form was filed on May 26<sup>th</sup>, 2023, seeking the orders set out below:

- i. A Declaration that the Claimant is entitled to an equitable interest in ALL that parcel of land part of **HAGLEY PARK PEN NOW KNOWN AS ADELAIDE PARK** in the parish of **SAINT ANDREW**, being Lot Number One now known as 82 ½ Waltham Park Road, Kingston 11, in the parish of Saint Andrew and being all of the land comprised in Certificate of Title registered at **Volume 1560 Folio 235** of the Register Book of Titles (“**Subject Property**”) by virtue of the doctrine of promissory estoppel pursuant to the verbal assurances made by the Defendant, in or around October 7<sup>th</sup>, 2016, for the sale of the Subject Property to the Claimant;
- ii. In the alternative, an Order that the Claimant is entitled to an equitable interest in the Subject Property to the extent of his financial and other contribution to the development/improvement and also based on representations made to the Claimant by the Defendant in respect of the Subject Property;
- iii. An Order to restrain the Defendant or his servants or agents from demolishing, damaging or removing the structure built by the Claimant on the Subject Property.

- iv. An Order restraining, whether by himself or by his servants or agents or otherwise however, from interfering with, disposing of by sale, or otherwise dealing with the Subject Property in any other manner inconsistent with the understanding or common intention for the Subject Property to be sold to the Claimant.
- v. An Order for Specific Performance compelling the Defendant to transfer by sale, the Subject Property to the Claimant.
- vi. An Order directing a Valuation be done by a reputable Valuator agreed between the Claimant and Defendant to determine the extent of the Claimant's interest in the Subject Property and the Claimant within thirty (30) days of producing the Valuation Report can purchase the same from the Defendant for its current value.
- vii. An Order for the Registrar of the Supreme Court is empowered to appoint a reputable Valuator. If either party refuses or fails to agree on a Valuator.
- viii. An Order that the cost of the Valuation is to be borne equally by the parties.
- ix. An Order that a Quantity Surveyor's Report is to be obtained from a Quantity Surveyor agreed between the parties within thirty (30) days of the date of the judgment.
- x. An Order for the Registrar of the Supreme Court is empowered to appoint a Quantity Surveyor. If either party refuses or fails to agree on a Valuator.
- xi. An Order that the cost of the Quantity Surveyor's Report is to be borne equally by the parties.
- xii. An Order directing the Registrar of Titles to sign the Instrument of Transfer and any other document required to complete the transfer of the Subject Property to the Claimant if the Defendant is unable or unwilling to do so;
- xiii. In the alternative: -

- a. An Order for all sums expended by the Claimant pursuant to the Loan Agreement dated October 7<sup>th</sup>, 2016 be repaid by the Defendant;
  - b. Damages for breach of contract in addition to or in lieu of specific performance at common law; and
  - c. Interest is to be applied to the value of the structure erected on the Subject Property from the date of construction until the date of payment.
- xiv. Interest on damages for breach of contract pursuant to the Law Reform (Miscellaneous Provisions) Act;
  - xv. Costs to the Claimant; and
  - xvi. Such further and/or other relief as this Honourable Court deems just.

## **SUMMARY OF THE CLAIMANT'S CASE**

### **TOSSAINT McDONALD**

- [3] The Affidavits of Tossaint McDonald, which were filed on the 20<sup>th</sup> day of February 2023 and the 9<sup>th</sup> day of June 2023, respectively, were permitted to stand as his evidence-in-chief.
- [4] He gave evidence that he is a Businessman who resides and operates his business, Rim Genie, at 82C Waltham Park Road, Kingston 11, in the parish of St. Andrew and that the disputed property is the neighbouring lot. He has been acquainted with the Defendant, Anthony Robinson for several years, since childhood days. He was allowed by Mr. Robinson to utilize the premises for the operation of his business. Eventually, Mr. Robinson offered to sell him the property. They arrived at an agreement for him to assist Mr. Robinson with obtaining the Certificate of Title in order to facilitate this purchase.
- [5] In or around October 2016, a Loan Agreement was crafted wherein Mr. McDonald agreed to pay all professional legal fees and costs associated with the Application to bring the unregistered property in dispute/land by possession under the

Registration of Titles Act as the Defendant did not have any monies to advance. It was verbally agreed that the sums paid by Mr. McDonald would go towards the purchase price for the property. Mr. McDonald tendered a copy of the Loan Agreement dated October 7<sup>th</sup>, 2016 into evidence. The Loan Agreement states that the purpose of the loan was to facilitate the Application to bring land under the Registration of Titles Act and was signed by Mr. McDonald and Mr. Robinson. There is a stipulation that the terms for repayment were to be set by Lender and interests fees payable as follows:

i. 15% on arrears

ii. 5% on late payment

[6] Up to the time of the filing of the first Affidavit, Mr. McDonald had expended the sum of **Four Million Three Hundred and Six Thousand Six Hundred and Five Dollars (\$4,306,605.00)** for which he produced receipts. A statement of account for the Application to register the land gives the overall cost of the process as **Eight Hundred and Ninety-Four Thousand Eighty-Three Dollars and Sixty Cents (\$894,083.60)**. The schedule of payment shows that payments were made up to October 20<sup>th</sup>, 2020 leaving a balance of **Four Hundred and Five Thousand Eighty-Three Dollars and Sixty Cents (\$405,083.60)**. The additional receipts included property tax payment for 2021/22 in the sum of **Forty-Two Thousand Four Hundred Dollars (\$42,400.00)**, valuation fee for 82C and 82 ½ Waltham Park Road in the sum of **Ninety-Two Thousand Three Hundred and Seventy-Five Dollars (\$92,375.00)**, Survey ID Report for 82C in the sum of **Forty Thousand Dollars (\$40,000.00)**, Pre-checked Boundary Plan in the sum of **One Hundred and Twenty Five Thousand Dollars (\$125,000.00)**, Surveyor's ID Report for 82 ½ in the sum of **Forty Thousand Dollars (\$40,000.00)**, Amendment to Pre-checked Boundary Plan in the sum of **Twelve Thousand Five Hundred Dollars (\$12,500.00)**.

[7] There were fifty-one (51) other receipts evincing payment for diverse material to include, plumbing, electrical and building supplies from a number of

establishments. Two (2) receipts bore Mr. McDonald's name, four (4) were in the name of his company. The majority bore no names with a few in the name, Garfield Brooks. Additionally, while the majority of the receipts bore no delivery addresses, those that did, made no reference to 82C or 82 ½ Waltham Park Road. The total sum excluding an invoice for **Three Hundred and Ninety-Two Thousand One Hundred and Seventeen Dollars and Sixty-Five Cents (\$392,117.65)**, for which no receipt was issued and two (2) point of sale printouts for the purchase of gasoline was **One Million Two Hundred and Eighty-Six Thousand Nine Hundred and Twenty-Six Dollars and Seven Cents (\$1,286,926.07)**.

**[8]** In his 2<sup>nd</sup> Affidavit, Mr. McDonald gave evidence that approximately eight (8) years ago, the Defendant and his girlfriend, Hyacinth Grant made a proposal to him that he should purchase the disputed property, since it benefitted his business. After discussing the matter with his wife, he agreed to purchase the property from the Defendant.

**[9]** Mr. McDonald averred that pursuant to the indication of the Defendant, he and his wife consulted with Ms. Latoya Green, the Defendant's Attorney. They were informed that the property did not have a Certificate of Title and whatever documentation the Defendant possessed to claim ownership was of no value. He was further advised that the Defendant would have to make an Adverse Possession Application, to facilitate the generation of a Certificate of Title. There was a discussion in respect of drafting a Loan Agreement and Sale Agreement in order to protect his interests but the latter was not done as the Defendant was not the registered owner of the property.

**[10]** Mr. McDonald testified that consequent on the Defendant's inability to enter into a written Sale Agreement, they entered into a verbal agreement for the sale of the property in the sum of **Six Million Dollars (\$6,000,000.00)** – no matter its value, subsequent to it being registered in the Defendant's name. Following this verbal agreement, he allowed the Defendant to live at the back of the property, while his immigration status to migrate to the United States of America was being finalised

and assisted him financially in this regard. Once the Defendant migrated his girlfriend, Hyacinth Grant remained in occupation of the one-bedroom dwelling on the property. After the Defendant migrated, Mr. McDonald spoke with him on the phone frequently.

**[11]** Mr. McDonald recounted that the process to obtain the Certificate of Title was plagued by delay as there were numerous rejections from the National Land Agency. He further stated that he and his wife secured the services of Timothy Thwaites, a Commissioned Land Surveyor to assist with the process. Whilst he awaited the issue of the Certificate of Title, all financial responsibilities and errands associated with the Loan Agreement and verbal agreement were undertaken by himself and his wife. In early 2022, in reliance on the Agreements and permission from the Defendant, he and his wife commenced construction work on the disputed property.

**[12]** In or around February 2022, he began to experience difficulties in contacting the Defendant. In one instance, he contacted the Defendant's mother in the United States of America and when he enquired of him, he heard Mr. Robinson saying, "*mi nuh waan talk to nobody, mi nuh have nutten fi seh to nuh body.*" This utterance caused Mr. McDonald to be alarmed.

**[13]** Following this show of hostility, efforts were then made to gain assistance from the Defendant's Attorney-at-Law in order to ascertain the progress of the Application. This attempt was unsuccessful as the Attorney was unhelpful. He then retained an Attorney-at-Law to assist with these enquiries and was informed that the Certificate of Title had been issued to the Defendant in or around the 16<sup>th</sup> of March 2022.

**[14]** Correspondence was sent to the Defendant's Attorney requesting that the agreements be honoured and the sale proceed. A letter dated June 24<sup>th</sup>, 2022 from the Claimant's Attorneys Tavares-Finson Adams to Green & Co., was tendered and admitted into evidence. Mr. McDonald was subsequently advised that the Defendant's Attorney-at-Law had indicated that she would pass the information on

to her client. A copy of this communication dated June 29<sup>th</sup>, 2022 was placed into evidence.

- [15] The Claimant stated that he has installed cameras at his residence and business place and said that when he and his wife checked the recordings, he observed that the Defendant's girlfriend, Ms. Hyacinth Grant used old blocks and debris to block the entrance of the building which he had constructed. He further stated that this caused him to become fearful that the construction work would be demolished. He said that Ms. Hyacinth Grant "*continues to hold herself out as the owner of the property and has expressed an intention to sell the property.*" He further stated that on or around April 13<sup>th</sup>, 2023, on viewing his security camera, he saw Ms. Hyacinth Grant, telling the Police that "*a man named Tossaint McDonald use badness to build the building*" when she was asked by the Police who owned the building.
- [16] In cross-examination, Mr. McDonald denied Counsel's suggestion that there was no verbal agreement between himself and the Defendant to purchase the property in dispute. He admitted that the Loan Agreement was prepared by the Defendant's Attorney. When challenged by Mr. Peterkin that he was stating for the first time that the Defendant gave him permission to build on the property, Mr. McDonald maintained that he was given permission and referred Counsel to paragraph 10 of his 2<sup>nd</sup> Affidavit.
- [17] Mr. McDonald stated that the sum of **Eight Hundred and Ninety-Four Thousand and Eighty-Three Dollars and Sixty Cents (\$894,083.60)** was the amount payable to the Attorney and did not include the cost of the Surveyor's Report, Valuation Report and property taxes. He acknowledged that only **Four Hundred and Eighty-Nine Thousand Dollars (\$489,000.00)** was paid by him and explained that this was due to his challenges communicating with the lawyer who was in turn, having issues liaising with Mr. Robinson.
- [18] Mr. McDonald was questioned about the Loan Agreement, he admitted that it contained an interest clause on arrears and late payment fee. It was also

acknowledged by him that the Loan Agreement contained no reference to the monies being loaned for the purchase of a property.

[19] Mr. McDonald did not accept that Ms. Grant had questioned him about whether the Defendant had given him permission to build on the land. He acknowledged that she had brought Police to the property but denied having any knowledge that she had made a report to the Parish Council. Mr. McDonald also denied that the construction had taken place without the Defendant's permission.

[20] Mr. McDonald denied that he had bullied Ms. Grant or had any disagreements with her whilst he was building on the property. He disagreed that the Defendant had tried to repay the loan and he had refused to collect the funds from him. Mr. McDonald also refuted the suggestion that the Defendant did not sign the Loan Agreement.

#### **JODI-ANN McDONALD**

[21] Jodi-Ann McDonald gave evidence in support of the Claimant. In her Affidavit which was filed on June 9<sup>th</sup>, 2023, Mrs. McDonald stated that she resides at the same residence as the Claimant and she is his wife. She gave her profession as a Canadian Immigration advocate and a Business Development Specialist.

[22] The content of her Affidavit largely mirrored that of the Claimant. Mrs. McDonald stated that she knew the Defendant for approximately twenty-four (24) years and had no difficulty doing business with him. They were also friends on Facebook.

[23] She attended the meeting at the lawyer's office where the application was discussed and the Loan Agreement was later drafted to protect the Claimant's interest.

[24] She confirmed that the Loan Agreement was executed between the Claimant and the Defendant and the Claimant had undertaken to pay all professional legal fees and costs associated with the Application, following which the property would be sold to him.

- [25] Mrs. McDonald testified that things had gone awry with Ms. Grant which created doubt whether the sale would occur.
- [26] She was cross-examined and disagreed that there had been no agreement for purchase of the disputed property. She insisted that there had been a verbal agreement that the building would be sold to Mr. McDonald for the sum of **Six Million Dollars (\$6,000,000.00)**, no matter the value. Mrs. McDonald also maintained that permission had been granted for construction to be done on the land.
- [27] Mrs. McDonald indicated that she was aware of one occasion on which Ms. Grant took a Police Officer to the property and made accusations against Mr. McDonald. Mrs. McDonald acknowledged that Ms. Grant resides on the property and that another individual operates a business there too. In re-examination, she gave his name as Christopher Dean also known as 'Radiator Man.'
- [28] When questioned by the Court whether she was present when the Claimant signed the Loan Agreement, Mrs. McDonald responded, "*I do not remember I believe I was present, but I leave room for error.*"

## **SUMMARY OF THE DEFENDANT'S CASE**

### **ANTHONY ROBINSON**

- [29] Mr. Anthony Robinson gave evidence that he resides at 530 W 144 Street, Apartment 53 Manhattan New York 10031 in the United States of America and is a Desk Clerk. Ms. Virginia Grant, otherwise known as Hyacinth Virginia Grant is his spouse.
- [30] He stated that his spouse is the person who dealt with obtaining the Certificate of Title for his property as he resides overseas. He denied that there was any agreement between himself and Mr. McDonald for his property to be transferred to him and asserted that the money advanced had merely been for a loan. Mr. Robinson denied that it had been agreed that the assistance to obtain the

Certificate of Title came with an undertaking that the property would be sold to Mr. McDonald. It was also denied by Mr. Robinson that he had signed any agreement.

- [31] Mr. Robinson insisted that no permission had ever been granted to Mr. McDonald to build on the property. Mr. Robinson further denied that he had been present with Mr. McDonald at the lawyer's office as he had been overseas at that time.
- [32] Mr. Robinson informed the Court that Mr. McDonald paid **Four Hundred and Eight-Nine Thousand Dollars (\$489,000.00)** as part of the fee to obtain the Certificate of Title for the property and Ms. Grant, his spouse paid the remaining balance of **Four Hundred and Five Thousand Dollars (\$405,000.00)** on behalf of Mr. Robinson. He further asserted that all attempts to repay Mr. McDonald the sum that was owed to him were unsuccessful as they were met with refusal.
- [33] Mr. Robinson stated that he gave his spouse, a Power of Attorney to manage his affairs which would include preventing Mr. McDonald from building on his property but Mr. McDonald used 'badness' to build. He also alleged that Mr. McDonald caused his mother to be hospitalized because of how badly he behaved towards her.
- [34] In cross-examination, the Defendant agreed that he and Mr. McDonald had grown up together and were neighbours whose properties are literally side by side. He agreed that prior to the transaction, he and Mr. McDonald were good friends and he had been employed by him. After he migrated, they kept in touch and would speak often on the phone. He also acknowledged that Mr. McDonald was good to him and always assisted him in any way that he could.
- [35] Mr. Robinson described the relationship as so good that whenever Mr. McDonald went overseas, he was the person who was left in charge of his business and he dealt with transactions for Mr. McDonald. He knew Mr. McDonald's wife, Jodi-Ann McDonald and they were friends on Facebook. He initially denied that she had sent money for him but subsequently accepted this.

- [36] Mr. Robinson was questioned about his relationship with Ms. Grant and admitted that he loves and cares for her and would do anything for her. She had been his girlfriend from 2008.
- [37] Mr. Robinson was questioned about two (2) individuals who occupied the property. He acknowledged that he had told Mr. McDonald about the fight they had due to Ruddy and Radiator Man trying to take over the property but denied telling him that one of them offered to buy the property from him for **Three Million Dollars (\$3,000,000.00)**. He subsequently admitted that he had heard about this and told Mr. McDonald. He further stated that he would have preferred if Radiator Man were to obtain the property instead of Mr. McDonald or Ruddy.
- [38] Mr. Robinson testified that he had no intention to sell the property to Mr. McDonald even if he doubled the **Three Million Dollars (\$3,000,000.00)**. He explained that this refusal was due to personal reasons. He never had discussions with Mr. McDonald about a sale for **Six Million Dollars (\$6,000,000.00)**, this discussion was held with his mother who later informed him about it.
- [39] Mr. Robinson admitted that the services of the Attorney-at-Law Latoya Green were retained to obtain the Certificate of Title. He did not agree with the suggestion that the Certificate of Title had been required in order to proceed with the sale of the property. Mr. Robinson stated that for the first meeting with the Attorney, the only parties present were himself (on the phone), Mr. McDonald and Ms. Grant. Mrs. McDonald was also present at the second meeting.
- [40] Mr. Robinson acknowledged that during the 2<sup>nd</sup> meeting, they had discussed the Application and Loan Agreement. He denied however that there had been any discussion about a Sale Agreement or that it had been deferred in order to first obtain the Certificate of Title. When taxed on how he had intended to repay this loan, Mr. Robinson mentioned for the first time that he had planned to raise Radiator Man's rent. He admitted that this statement did not appear in his Affidavit.

- [41]** Mr. Robinson strongly denied that he had approached Mr. McDonald about a loan to obtain the Certificate of Title and insisted that it was in fact Mr. McDonald who approached Ms. Grant with the proposal. Mr. McDonald spoke to him on his girlfriend's phone and suggested it as a way to get rid of Ruddy and John who were not paying their rent. He did not like the proposal but was encouraged by his girlfriend to embrace it.
- [42]** In explaining how communication between himself and the Claimant had come to an end, Mr. Robinson stated that Mr. McDonald was always checking in for updates on the Certificate of Title. He acknowledged that Mr. McDonald had offered to pay his fare to Jamaica when the Certificate of Title was almost ready and stated that he never responded to this offer. After the Certificate of Title was ready, he gave Ms. Grant, a Power of Attorney. Mr. Robinson denied that it was after the Certificate of Title was ready that Mr. McDonald began to experience difficulty reaching him and insisted that it was before.
- [43]** Mr. Robinson denied that Mr. McDonald tried making contact with him when the Certificate of Title was ready and insisted that Mr. McDonald had tried reaching his mother. He acknowledged however that on a phone call with Mr. McDonald, he had told him that he did not want to talk to anybody. He did not agree that the construction by Mr. McDonald had commenced close to the point when the Certificate of Title was ready.
- [44]** Mr. Robinson explained that his refusal to speak to Mr. McDonald stemmed from the fact that there were problems between Mr. McDonald and Ms. Grant. He accused Mr. McDonald of bullying Ms. Grant and admitted that she would have a problem with Mr. McDonald owning the property.
- [45]** Mr. Robinson did not agree with the suggestion that contact had ceased with Mr. McDonald since February 2022, but subsequently acknowledged that it was about this time. Mr. Robinson conceded that his Affidavit made no mention of when he actually stopped speaking to Mr. McDonald.

- [46] Mr. Robinson agreed that Mr. McDonald had informed him that he was bringing some large machines to Jamaica but denied that he was told that Mr. McDonald needed to build a place on the property to house them before they arrived. It was accepted by Mr. Robinson that Mr. McDonald played an active role alongside Ms. Grant in facilitating the Application for adverse possession. He candidly stated that it was Mr. McDonald who had started the process. He disagreed with the suggestion that he was not speaking the truth when he said that Mr. McDonald only loaned him money to obtain the Certificate of Title and not to purchase the property.
- [47] Mr. Robinson indicated that he had tried to repay the loan before the Certificate of Title was ready and gave this date as around April 27<sup>th</sup>, 2023. He reluctantly accepted that this date was after the Certificate of Title.
- [48] At this point, Counsel for the Claimant commenced putting the Claimant's case to Mr. Robinson and it was observed that someone was in the background indicating how he should respond. The proceedings were interrupted as the Court instructed the female, who it was revealed was Mr. Robinson's mother, to leave the room and cautioned Mr. Robinson.
- [49] Mr. Robinson insisted that Mr. McDonald had been aggressive to both his mother and Ms. Grant and had even caused his mother to be hospitalized because of his behaviour. He maintained that he had heard Mr. McDonald cursing his spouse on the phone even if he did not see him.

### **HYACINTH GRANT**

- [50] The Affidavit of Ms. Grant, which was filed on July 27<sup>th</sup>, 2023, was permitted to stand as her evidence-in-chief. Ms. Grant stated that she resides at 82 ½ Waltham Park Road in the parish of Saint Andrew and that she is the spouse of the Defendant.
- [51] She denied that there was an agreement for the property to be transferred to Mr. McDonald and that the money paid by him was a loan. She said that Mr. McDonald

paid the money directly to the Lawyer who was dealing with the Certificate of Title. Mr. McDonald did not assist Mr. Robinson to obtain the title for the property to facilitate the purchase by him. A loan was given and it was always Mr Robinson's intention to repay it.

[52] On the occasion when the Loan Agreement was to be prepared, it was herself and Mr. McDonald who went to the Attorney-at-Law as Mr. Robinson was overseas at the appointed time. The Loan Agreement was prepared but her spouse was unable to sign it and she questioned the signed document produced to the Court. Mrs. McDonald was not present and there was no discussion about a Sales Agreement with the Lawyer. Neither was there a verbal agreement between the parties in this regard. Ms. Grant poured scorn on the suggestion that Mr. McDonald had given permission to Mr. Robinson to live at the back of the property as it belonged to her spouse. Ms. Grant confirmed that the original structure inhabited by her and Mr. Robinson had been built from board but was now concrete. She asserted that her spouse had no intention to sell the property to anyone because that is her home.

[53] Ms. Grant insisted that Mr. McDonald had never been granted permission to build on the property but did so of his own accord. Ms. Grant maintained that she had been residing at the property before her spouse migrated to the United States of America. She accused Mr. McDonald and his friends of verbally abusing her when she questioned his authority to build on the property.

[54] She stated that she sought to obtain a Power of Attorney to stop the building and alleged that it was collected by a T. McDonald. A Police Report was made in this regard and the slip in respect of same exhibited. A Power of Attorney was subsequently obtained as the Claimant had continued building and further reports were made to the Police and to the Building Department of the Kingston & St. Andrew Municipal Corporation.

[55] She asserted that Mr. McDonald paid **Four Hundred and Eight-Nine Thousand Dollars (\$489,000.00)** towards the Attorney's fees to obtain the Certificate of Title for the property and she paid the balance of **Four Hundred and Five Thousand**

**Dollars (\$405,000.00).** She further asserted that all attempts to repay Mr. McDonald were unsuccessful as he refused to accept payment. Ms. Grant stated that she became suspicious of Mr. McDonald's relationship with the Attorney-at-Law as she believed that they were communicating in the absence of herself and Mr. Robinson and terminated the agreement for payments to be accepted from Mr. McDonald.

**[56]** In cross-examination, it was suggested to Ms. Grant that Mr. Robinson loves her and would do anything that she asked him to do. She stated that Mr. Robinson would have to answer the first suggestion himself and denied the second. Ms. Grant insisted that although she had requested the Power of Attorney from Mr. Robinson in February 2022, this was before Mr. McDonald built the concrete structure. It was also contended by her that Mr. Robinson obtained the Certificate of Title when he visited Jamaica in May 2023.

**[57]** Ms. Grant was questioned about the dates of the two (2) Power of Attorneys and stated that one was dated January and the other March. She stated that it was the March document that Mr. McDonald took. When pressed on the conflicting responses, she stated that she could not recall the dates. She asserted that one of the Power of Attorney had been exhibited by Mr. McDonald but when asked to point this out, she accepted it was not there. Ms. Grant acknowledged that there had been a conversation between Mr. Robinson and Mr. McDonald about bringing machines into Jamaica and stated that was a part of it.

**[58]** She asserted that the men had discussed Mr. McDonald constructing a little shed to house the machines. She stated that contrary to what was discussed, Mr. McDonald built a big factory. Ms. Grant then admitted that she had walked away during the conversation and is unable to say all that they spoke about. She provided the timeline of the construction as approximately six (6) months after this conversation. She accused Mr. McDonald of bullying her during this period.

**[59]** Ms. Grant further stated that Mr. Robinson chose Ms. Green to make the application because his mother knew her. Ms. Grant stated that when she took Mr.

McDonald to Ms. Green's office, the conversation only included her, Mr. Robinson and Mr. McDonald.

[60] Ms. Grant disagreed that Ms. Green advised Mr. Robinson that he could not sell his property because his name was not on the Certificate of Title. She also denied that it was at this point that Ms. Green spoke to Mr. Robinson about an Application for Adverse Possession. She explained that her role in the adverse possession process involved locating witnesses who grew up in the community, getting the owner's birth certificate and paying the taxes.

[61] She denied that the conversation about the machines occurred in 2021. She also refuted the suggestion that it was after the conversation in 2021 that Mr. McDonald constructed the building in the back. She accepted that a part of the building at the back was on Mr. McDonald's property but insisted that another part was on the disputed property. Ms. Grant maintained that Mr. McDonald had stolen the package with the Power of Attorney and denied that she only said this because she did not like him.

[62] Ms. Grant rejected the suggestion that it was after she observed that a survey was being done that she instructed Ms. Green not to accept any further payments from Mr. McDonald. Ms. Grant was asked about the Police Reports and the report to KSAMC and agreed that there was no reference to Mr. McDonald in these documents.

## **SUBMISSIONS**

Extensive submissions were filed on behalf of the Parties. While they have been carefully reviewed by the Court, they have been summarised for the purposes of this judgment.

### **Claimant's Submissions**

[63] Mrs. Kaysian Kennedy-Sherman, Attorney-at-Law for the Claimant, made comprehensive submissions in writing. She argued that the issues which arose for the Court's determination are as follows:

- i. Whether the Claimant is entitled to an equitable interest in the relevant property by virtue of the doctrine of proprietary estoppel?
  - Pursuant to the verbal assurances made by the Defendant, in or around October 7<sup>th</sup>, 2016 for the sale of the subject property to the Claimant? Alternatively;
  - To the extent of his financial and other contribution to the development/improvement and also based on representations made to the Claimant by the Defendant in respect of the subject property?
- ii. Whether the Claimant is entitled to an Order for Specific Performance compelling the Defendant to transfer by sale, the subject property to the Claimant?
- iii. Alternatively, whether the Claimant is entitled to:
  - a. An order for all sums expended by the Claimant pursuant to the Loan Agreement dated October 7<sup>th</sup>, 2016 be repaid by the Defendant.
  - b. Damages for breach of contract in addition to or in lieu of specific performance at common law; and
  - c. Interest being applied to the value of the structure erected on the subject property from the date of construction until the date of payment.

[64] Learned Counsel placed reliance on the authority of **Horace Brown, Shirley Brown and Christopher Brown v Ellen Ann Mellish** [2022] JMSC Civ. 162 which mentioned **Caren Cranston v Tamazine Samuels and Gairy Toolie** and **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ. 6 to bolster her argument that the Claimant is entitled to invoke the doctrine of proprietary estoppel as the Defendant through his verbal assurances led, encouraged and/or allowed the Claimant to believe that he would become the owner of the land and in relying on that belief, the Claimant acted to his detriment.

**[65]** Learned Counsel submitted that the evidence in support of the Claimant's case is to be preferred to that of the Defendant as it clearly shows that the Defendant encouraged and/or allowed the Claimant to hold that he would become the owner of the land and the Claimant relied on this representation. Counsel argued that the Defendant did so by virtue of the following points:

- a. Presenting a proposal to the Claimant that he purchase the relevant property from the Defendant.
- b. Subsequently, inviting the Claimant and his wife to the law office of Green and Company, to meet with a Ms. Latoya Green, the Attorney-at-Law for the Defendant, to discuss the issues concerning the intended purchase and the manner in which the parties were to proceed.
- c. Agreeing that the Claimant pay all professional legal fees and costs associated with the Adverse Possession Application and the transfer of the said property to the Claimant.
- d. Giving verbal permission to the Claimant from early 2022 to do construction works on the subject property.
- e. Subsequent to the verbal permission being given to the Claimant to do construction works, causing the Claimant to have difficulties in reaching him to receive updates concerning the Adverse Possession Application.

**[66]** Learned Counsel stated that since the Claimant had placed full trust and confidence in the Defendant in the belief that based on the nature of their relationship the Defendant would honour their agreement, the Defendant ought to be compelled to give effect to these expectations.

**[67]** Learned Counsel submitted that equity requires that this be done as failing to give effect to the Claimant's expectations would result in him suffering a resultant detriment or disadvantage having expended monies on the property due to the unconscionable withdrawal of the representation made by the Defendant.

**[68]** With regard to the equitable remedy of Specific Performance, Counsel submitted that the Claimant is entitled to an order for Specific Performance compelling the

Defendant to transfer by sale the subject property to the Claimant. Counsel urged the Court to look at the circumstances of the case and find that it is more probable true than not, that the acts of the Claimant amount to acts of part-performance which prove that there must have been an oral contract for the sale of the property and grant a decree of specific performance in the circumstances. The Claimant relied on the dicta of the Court in **Saed Habib Mattar v James Salmon** [2020] JMSC Civ. 48 to support their position.

- [69] In addressing the accounts of the respective parties under cross-examination, Mrs. Kennedy-Sherman submitted that the Claimant and his witness were not impeached but remained credible and consistent in their position. Counsel submitted that on a balance of probabilities, the Claimant has satisfied the Court that he is entitled to the relief being sought in the Amended Fixed Date Claim Form.
- [70] Mrs. Kennedy-Sherman contended that the evidence adduced at trial for the Defendant corroborates the Claimant's testimony. Counsel submitted that Mr. Robinson and his witness gave answers in cross-examination which bolstered the Claimant's case and was contrary to their evidence-in-chief. Counsel further submitted that their evidence pertaining to the purpose for which the Certificate of Title was obtained, the relationship between the parties, the reason for the change of heart/position and the permission to build was quite telling.
- [71] Mrs Kennedy-Sherman argued that the Defendant's "belated" attempt to assert that there was no verbal agreement in place for the sale of the property ought not to be believed by this court as it is quite probable that the Defendant experienced a change in position due to the conflict between his spouse and the Claimant.
- [72] Counsel urged the Court to disregard the evidence of the Defendant that the Claimant built on the property without permission and acted in a manner that can be characterized as "bullyism" in order to obtain to the property.

## Defendant's Submissions

[73] Learned Counsel for the Defendant, Mr. Peterkin, submitted that the Claimant has failed to provide a valid contract for the alleged sale of the land herein. He argued that no memorandum or note or any document was exhibited which demonstrates that there was an agreement between the parties. Counsel further submitted that the Claimant failed to prove a contract in law and should therefore not receive the orders sought in this claim. In support of this position, Counsel relied on **Section 4 of The Statute of Frauds** which provides that:

*“No action shall be brought.... Upon any contract for the sale for lands tenements or hereditaments or any interest in or concerning them or upon any agreement that is not performed within the space of one year from the making thereof unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or some person thereunto by him lawfully authorized.”*

[74] Learned Counsel argued that in **Equilibrio Solutions Jamaica Ltd. Peter Jarvis & Associates Limited** [2021] JMCC COM 26, Laing J. summarized the pertinent principles of contract at paragraphs 9 and 10. Counsel placed reliance on **RTS Flexible Systems Ltd. V Molkerei Alois Muller GmbH & Co KG (UK Production)** [2010] 1 WLR 753 where Lord Clarke set out the general principle of a binding contract. He opined that whether there is a binding contract between the parties and, if so, on what terms depends upon what they have agreed. He explained further that it depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct and whether that leads objectively to a conclusion that they intended to create legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations.

[75] Counsel pointed out that the Defendant unequivocally denies that a contract of sale existed between the parties. Both parties presented evidence in respect of the Loan Agreement which was to facilitate the registering of the land. Counsel submitted that the Claimant should not be permitted to create a contract out of thin

air, with none of the usual elements of a contract: with no offer, no acceptance, no meeting of the minds and no consideration.

- [76] Counsel further submitted that if the Claimant wishes to present arguments that there was an implied term to the Loan Agreement that the property would be sold to him, then they would place reliance on **Geotechvision Enterprises Limited v E-Learning Jamaica Company Limited** [2023] JMCC COMM 25 where Morrison JA stated that the court in implying a term in a contract is generally seeking to give effect to the presumed intention of these parties as collected from the words of the Agreement and the surrounding circumstances. Counsel also referred to the authority of **Andrew Harbour v Palmyra Resorts & Spa Limited and Palmyra Properties Ltd.** [2012] JMSC Civ. 44.
- [77] Counsel argued that the Claimant is put to strict proof that there was an intention to include an implied term in the contract for Loan Agreement, as the Defendant denies this claim wholeheartedly. Counsel contended that the Claimant has failed to establish an Agreement for sale whether written or oral and should not be permitted to bring this matter further.
- [78] Counsel highlighted the complaints made by Ms. Grant to the Jamaica Constabulary Force and the KSAMC to prevent the unlawful construction on the Defendant's property. He further submitted that the Claimant does not hold any lien or any equitable interest in the Defendant's property as all of the Claimant's acts in terms of construction were done without the consent or acquiescence of the Defendant who is the property owner.
- [79] Mr Peterkin relied on the authority of **Earle Alexander Shim v Sylvia Elmay Shim et al CLAIM NO. 2005HCV02986** which examined proprietary estoppel. Counsel outlined the definition provided by Mark Palowski in the text, *The Doctrine of Proprietary Estoppel* 2<sup>nd</sup> Edition, where it was stated that:

*“The essence of proprietary estoppel is that if a legal owner of land has so conducted himself, I either by encouragement or representations, that the Claimant believes that he has or will acquire some right or interest in the land and has so*

*acted to his detriment on that basis, it would be unconscionable for the legal owner to assert his strict legal rights.... The essence of proprietary estoppel is unconscionable conduct in inducing or encouraging another to believe that he will obtain an interest in, or right over, the defendant's property..."*

[80] Counsel argued that the Defendant maintains that he did not encourage or induce the Claimant to believe that he would obtain an interest in, or rights over the Defendant's property. The only agreement between the parties was for a loan to assist with the legal fees involved in obtaining the Registered Title. In addressing the structures erected on the building, Mr. Peterkin relied on the dicta of Williams, J. in **Greaves v Barnett** (1978) 31 WIR 88 at page 91 (applied in Shim) that,

*"[t]he general rule is that what is affixed to the land is part of the land so that the ownership of a building constructed on the land would follow the ownership of the land on which the building is constructed. " ...Another general principle applicable here is that stated by Bowen, L.J. in Falke v Scottish Imperial Ins. Co. (1886) 34 Ch. D. 234 at page 248: "...work and labour done, or money expended by one man to preserve or benefit the property of another do not according to English law create any lien upon the property saved or benefited, nor, even if standing alone, create any obligation to repay the expenditure. Liabilities are not to be forced upon people behind their backs any more than you can confer a benefit upon a man against his will. "*

## **ISSUES**

[81] Upon reviewing the submissions of the respective parties, it is noted that there is no dispute as to the relevant issues to be determined and these have been identified as follows:

1. Whether the Claimant is entitled to an equitable interest in the relevant property by virtue of the doctrine of proprietary estoppel?
2. Whether the Claimant is entitled to an Order for Specific Performance compelling the Defendant to transfer by sale, the subject property to the Claimant?

## RELEVANT LAW

### Proprietary Estoppel

- [82] Proprietary estoppel is a legal remedy which can be used when a landowner has promised that property will be transferred to someone else at a later date and subsequently reneges on his statement. Simply put, the doctrine of proprietary estoppel is founded on the principle that it would be unconscionable to allow the owner of land who encourages a person to expend on his land to his detriment by a promise, encouragement or assurance in sufficiently clear terms that, that person, will acquire an interest in the land, to insist upon/assert his strict legal right, without recognizing or accepting the entitlement to that person of a proprietary interest in the land.
- [83] The Court of Appeal in the case of **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ. 6 examined the principle of proprietary estoppel. Morrison JA (as he then was) stated that: -

*“Although proprietary estoppel is not based on contract, it is therefore always necessary to have regard to the nature and terms of any agreement between the parties. In the absence of agreement, the important starting point must be, firstly, whether there has been a representation (or assurance) by the landowner, capable of giving rise to an expectation that is not speculative, that she will not insist on her strict legal rights. Secondly, there must be evidence of reliance on the representation (or change of position on the strength of it) by the person claiming the equity. Thirdly, some resultant detriment (or disadvantage) to that person arising from the unconscionable withdrawal of the representation by the landowner must be shown. But unconscionability, standing by itself, without the precedent elements of an estoppel will not give rise to a cause of action.”*

- [84] At paragraph 65, Morrison J noted that the modern law of proprietary estoppel is still underpinned by the classic statement of the principle by Lord Kingsdown in **Ramsden v Dyson** (1866) LR 1 HL 129:

*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.”*

[85] At paragraph 60 of the authority, **Caren Cranston v Tamazine Samuels and Gairy Toorie** [2019] JMCA Civ. 42, Edwards JA also examined and outlined the principle as it relates to the doctrine of proprietary estoppel by stating that:

*“The doctrine of proprietary estoppel was developed in equity as a species of equitable estoppel and is a remedy against the unconscionable or inequitable conduct of one party in dealing with another. The remedy is available where it is established that “one party knowingly encourages another to act or acquiesces in the other’s actions to his detriment and in infringement of the first party’s rights” (see Hanbury & Martin Modern Equity, 17th edition, at page 897, paragraph 27-022). That party cannot later complain of the infringement of his proprietary rights, and may be forced to give up that right which he encouraged the other party to expect. It is a cause of action in equity brought by a claimant to validate his expectation that he would gain a benefit or right in the defendant’s property, brought on by the conduct of the defendant in encouraging, promising or acquiescing in the claimant’s acting to his detriment based on that expectation. Estoppel then creates a new right and interest in the claimant. The burden of proof falls on the defendant to show that the claimant’s conduct was not induced by his assurances. The extent of the equity is to make good the claimant’s expectations.”*

[86] The Learned Judge’s statement at paragraph 63 of the **Caren Cranston** (supra), is equally instructive where she states that:

*“The defendant, his agent or his predecessor in title, therefore, must have encouraged the claimant to expend money or do other acts directly or indirectly by abstaining from asserting his legal rights. The claimant then has to show that the defendant, by now asserting his legal right, is acting in an unconscionable, unequitable and unjust manner. If this occurs, the question is what remedy would be available to the appellant.”*

[87] The Learned Authors of **Gray & Gray** also examined the modern law of proprietary estoppel and summarized it at paragraph 9.2.8 as follows:

*“A successful claim of proprietary estoppel thus depends, in some form or other, on the demonstration of three (3) elements:*

- i. Representation (or an ‘assurance’ of rights);*
- ii. Reliance (or a ‘change of position’); and*

iii. *Unconscionable disadvantage (or 'detriment').*"

[88] Lord Scott noted in the case of **Yeoman's Row Management Limited and another v Cobbe** [2006] 1 WLR 2964 that:

*"...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, some point of mixed fact and law, that the person against whom the claim is made can be estopped from asserting. Proprietary estoppel requires clarity as to what it is that the object of the estoppel is 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 recognized, proprietary estoppel will lose contact with its roots and risk becoming unprincipled and therefore unpredictable, if it has not already become so."*

[89] Finally, in **Taylor Fashions Limited v Liverpool Victoria Friendly Society and Old & Campbell Limited v Liverpool Victoria Friendly Society** [1979] EWHC Ch. 1, Oliver J stated the applicable test at paragraph 11 of his judgment as follows:

*"The real test, I think, must be whether, upon the facts of the particular case, the situation has become such that it would be dishonest or unconscionable for the Plaintiff, or the person having the right sought to be enforced, to continue to seek to enforce it."*

### **Specific Performance**

[90] The decision of **Saed Mattar v James Salmon** (supra), to which Counsel made reference earlier, provides a useful discourse on the relevant legal principles involved in specific/part performance in its review of a number of authorities between paragraphs 53 to 58. These are outlined as follows:

*[53] In Aubrey Faulknor v Pearjohn Investments Ltd and Another Suit No. C.L.1994/F-097 at page 12, F.A. Smith, J stated that "in respect of the sale of land, the doctrine of part performance was developed by the Courts of Equity to enable a litigant, who is unable to claim damages for breach of an oral agreement by virtue of the Statute of Frauds, to obtain a decree of specific performance in certain circumstances."* (emphasis added)

[54] In *Nation Hardware Ltd. v Norduth Development Co. Ltd et al*, Sykes J (as he then was) stated at para. 22 that **'...part performance is predicated on the proposition that there is an oral contract between the parties and because there is an insufficient memorandum in writing, the proffor of the oral contract usually points to some conduct that is explicable (I hesitate to say only) on the basis that there must have been a prior agreement for the sale of land between the parties.'** (emphasis added)

[55] The approach to be taken to determine whether actions of a party amount to sufficient acts of part performance was outlined in *Steadman v Steadman*. Firstly, at page 981 it was stated that: You must first look at the alleged acts of part performance and see whether they prove that there must have been a contract and it is only if they do so prove that you can bring in the oral contract. A thing is proved in civil litigation by shewing that it is more probably true than not; and I see no reason why there should be any different standard of proof here

[56] At page 982 the court continued: **In my view, unless the law is to be divorced from reason and principle, the rule must be that you take the whole circumstances, leaving aside evidence about the oral contract, and see whether it is proved that the acts relied on were done in reliance on a contract: that will be proved if it is shewn to be more probable than not...**(emphasis added)

[57] Then at page 986 the court relied on an extract from *Fry on Specific Performance* and stated: A passage in *Fry on Specific Performance*, 6th Edn (1921), p 278, para 582 reads: "The true principle, however, of the operation of acts of part performance seems only to require that the acts in question be such as must be referred to some contract, and may be referred to the alleged one; that they prove the existence of some contract, and are consistent with the contract alleged. In *Chaproniere v Lambert* ([1917] 2 Ch 356 at 361, [1916–17] All ER Rep 1089 at 1092) Warrington LJ cited a passage from *Fry on Specific Performance* 5th Edn (1911), p 291, para 580 (repeated in the sixth edition) which stated **four conditions which had to be satisfied for there to be part performance: (1) the acts of part performance must be such as not only to be referable to a contract such as alleged but to be referable to no other title; (2) they must be such as to render it a fraud in the defendant to take advantage of the contract not being in writing; (3) the contract to which they refer must be such as in its own nature is enforceable by the court; and (4) there must be proper parole evidence of the contract which is let in by the acts of part performance, and Warrington LJ added ([1917] 2 Ch at 361, [1916–17] All ER Rep at 1092):**

**'Every one of those four conditions is essential to enable the act relied on to be treated as part performance. It is not sufficient to prove acts referable only to the contract alleged**

*and no other. They must be such as to render it a fraud in the defendant to take advantage of the contract not being in writing.' That I take to be in full accord with the first of the four circumstances which Fry states must concur to withdraw a contract from the operation of the statute. The acts of part performance must be such that they point unmistakably and can only point to the existence of some contract such as the oral contract alleged. But of course, the acts of part performance need not show the precise terms of the oral contract (see Kingswood Estate Co Ltd v Anderson). The terms of the oral contract must be proved by acceptable evidence but effect to them can only be given if and when acts of part performance establish that there must have been some such contract. Until then a door is, so to speak, closed against them."* (emphasis added)

[58] Continuing at page 987 the court stated: Without a connection established by parol testimony the payment of the money would not begin to suggest or to establish either the existence of a contract or of a contract in relation to land.

## **DISCUSSION/ANALYSIS**

### **Proprietary Estoppel**

[91] In determining whether this doctrine is applicable to the case at bar, in addition to the cases cited by Counsel and those referenced above, I am also guided by the principle enunciated by Lord Denning MR in the case of **Crabb v Arun District Council** [1975] 3 All ER 865, at p. 871 where he opined that:

*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. **What then are the dealings which will preclude him 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: see Central London Property Trust v High Trees House, Charles Rickards v Oppenheim ([1950] 1 All ER 420 at 423, [1950] 1 KB 616 at 623). 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. (emphasis added)*

[92] This authority is instructive as it highlights the fact that a Claimant who has received a promise and/or assurance from a Defendant can receive redress pursuant to the principles of equity. Equity will examine the words or conduct of a party and if, on an assessment of all three (3) elements of the doctrine of proprietary estoppel, it is found that the defendant has acted unconscionably, equity will intervene and prevent him from utilizing the rigours of the law to renege on his promise. The question to be answered is whether in the instant case all the three (3) elements of the doctrine of proprietary estoppel can be established.

[93] The three (3) basic requirements which the evidence presented, must show are:

- a. A promise, encouragement, representation or assurance, expressed in sufficiently clear terms moving from the defendant to him, giving rise to an expectation that the Claimant would have an interest in land (**representation or an assurance of rights**);
- b. The Claimant must demonstrate that it was reasonable for him to rely on this promise, encouragement or assurance and that he did in fact rely on this promise, encouragement, representation or assurance (**a reliance or a change of position**); and
- c. that in relying on this promise, encouragement, representation or assurance, the Claimant acted to his detriment, and so it would be

unconscionable to deny him the right to a proprietary interest in the property (**unconscionable disadvantage or detriment**).

### **ISSUE 1: Representation/Assurance of Rights**

- [94]** It is the submission of Counsel for the Claimant that the Defendant had assured the Claimant of an interest in the property and in reliance on that assurance, he expended his time and resources in honouring the Loan Agreement by paying the Attorney's fees and related fees for obtaining the Certificate of Title and invested millions of dollars in construction on the property. She contended that the Claimant is now suffering a disadvantage as the Defendant has unconscionably reneged on their promise. This is seen in the fact that the moment the Claimant indicated that the Certificate of Title was almost ready, the Defendant discontinued communication with him.
- [95]** It is trite law that unconscionability is central to the doctrine of proprietary estoppel. Decided cases on this point have made it clear that where the actions of the landowner are such that it would be unconscionable for him to assert his proprietary entitlement or not to transfer title, an equitable estoppel (proprietary estoppel) may arise to prevent him from enforcing or relying on his legal rights, once certain conditions are fulfilled.
- [96]** It is clear from the evidence that the Parties are at odds as to whether there was any representation made by the Defendant that the property was to be sold to the Claimant. There is also no agreement that the Claimant had reasonably relied on these assurances and acted to his detriment. In assessing the respective accounts, what is readily apparent is that both men had previously enjoyed a close relationship. It continued to be close even when the Defendant became the Claimant's employee and both parties agree that the Claimant would leave the Defendant in his business to operate and collect funds. The Defendant acknowledged that the Claimant was always good to him, he had a friendship with his wife and had received money from her on more than two (2) occasions.

- [97]** It is evident that in the context of this close relationship, the conversation about the property and how it could be registered arose and the Defendant had no qualms about being assisted by the Claimant with this process. The Court accepts that Mr. Robinson and Mr. McDonald had several conversations which did not include Ms. Grant and on Mr. Robinson's own account, this would have included discussions about the property. The first time that Ms. Grant appears as an active player in the dynamics was when Mr. Robinson enlisted her assistance to have matters dealt with by the Lawyer since he was abroad. She was his Representative and was present along with Mr. McDonald and later Mrs. McDonald for meetings with the lawyer.
- [98]** It was accepted by both Mr. McDonald and Mr. Robinson that even after these meetings they continued to speak on the phone. Mr. Robinson admitted that things became sour and communication ceased on his end because of complaints made against Mr. McDonald by Ms. Grant. It was interesting to note that Mr. Robinson did not personally have any issues with either Mr. McDonald or his wife only Ms. Grant did.
- [99]** It was also interesting to note that though Ms. Grant elected to use the lawyer because of her relationship with Mr Robinson's mother, she subsequently had a complaint about the lawyer as she basically accused her of favouring Mr. McDonald. The only explanation advanced for this conclusion was that she was speaking to Mr. McDonald when Ms. Grant and Mr. Robinson were not around. In circumstances where Mr. McDonald was going to the lawyer's office to make payments on the Attorney's fee, was having the Valuation and Survey done and taking care of those fees, this interaction seemed only natural. Ms. Grant however chose to have an issue with it and instructed the lawyer that no further payments were to be accepted from him on her fees. The timing of this instruction was of some interest as based on the statement of account, it was in close proximity to when the Certificate of Title was to be issued.

**[100]** The upshot of the foregoing observations is that the parties appear to have been acting in tandem as to what was to happen with the property until Ms. Grant became involved. It was quite telling that even though Mr. Robinson indicated under cross-examination that he would prefer Radiator Man to get the property, Ms. Grant was dismissive of such a possibility and declared in her evidence that she has no intention of moving anywhere and Mr. Robinson would not sell the property as it was '*her home*'.

**[101]** I found this declaration to be quite instructive as it clearly revealed that Ms. Grant was the source of disharmony, '*the cat among the pigeons*' in terms of the original plans being fulfilled and representations honoured. It is undisputed that Mr. McDonald is a businessman who operates a business from 82C Waltham Park Road. It was also accepted that there would be a great benefit to him in acquiring the neighbouring property. I believe that it was with this in mind that Mr. Robinson offered to sell it to him in circumstances where he was migrating to the United States of America. They were friends and this sale would have been beneficial to both of them but the plans were delayed because Mr. Robinson had no Certificate of Title.

**[102]** The Court accepts that it was in order to ensure that this plan could be brought to fulfilment that they devised the plan, with the advice of the Attorney, to obtain the Certificate of Title first then to proceed with the sale. I have examined the Loan Agreement and I observed that it contains provisions for interest in the event of late payments and arrears. In explaining this, Mr. McDonald indicated that these clauses were for his protection in the event, the application did not go through. I have considered this explanation and I accept that Mr McDonald being a Businessman who was entering into a legal contract to provide large sums of money to register a property that was not his own, would have been acting prudently in having these provisions included. I did not believe that the inclusion of these terms indicated that the sole intention had been for there to be a loan to obtain the Certificate of Title.

[103] My assessment of Mr. Robinson revealed that he was a man who was susceptible to influence by Ms. Grant, as without seeing any of the conduct complained of, he cut ties with Mr. McDonald and resiled from the verbal agreement that the property would be sold to him. He even disputed that the signature on the loan document was his, but curiously never alleged fraud or sought to have the signature examined by an expert.

[104] In view of the foregoing observations, I am satisfied on the evidence that the Defendant had provided assurances to the Claimant and this motivated Mr. McDonald to embrace the idea of not only paying the Attorney's fees but the additional fees of over **Three Hundred Thousand Dollars (\$300,000.00)** associated with having the property valued and the Surveyor's ID Report prepared. These being documents which would have been required as a part of the registration process. It was clear that neither the Defendant nor Ms. Grant had even given thought to these additional expenses or sought to cover them as although they both insisted that they had tried to refund the money paid by Mr. McDonald to the Attorney, no mention was made of these additional sums which would still remain due and owing to him.

[105] In the case of **Pascoe v Turner** [1979] 1 WLR 431, the Defendant made representations and assurances to the Claimant that '*the house is yours and everything in it.*' In reliance on that assurance, the Claimant carried out improvements to the house. Although the improvements were modest, the cost represented a large portion of the Claimant's savings. She sued on the basis of the establishment of a constructive trust of the entire beneficial interest. The court found that she had failed on the principle of constructive trust but nevertheless found that an equity in the form of a proprietary estoppel had been established.

[106] In a similar vein, in the case at bar, the evidence shows that the Defendant made a representation to the Claimant that he would be given a proprietary interest in the subject property, once the Certificate of Title was obtained with his assistance. In the circumstances, the Claimant has satisfied this limb of the tripartite

requirements to assert proprietary estoppel and the remaining factors would now have to be considered.

**ISSUE 2: Reliance – Whether the Claimant relied on the representation, promise or encouragement to his detriment?**

**[107]** It is the Defendant's position that not only was there no representation to ground a proprietary interest, but the Claimant had no reasonable basis for saying he relied on this to his detriment. Mr. Robinson and his witness insist that the provision of the loan could not meet the evidentiary threshold in this regard. The Claimant, on the other hand, relies on not only the fees but the monies expended in paying the related fees and the construction on the property. From the account of Ms. Grant, there were two (2) buildings, one at the front and the other at the back which rested on the properties owned by the Defendant and the Claimant.

**[108]** In my assessment of whether this limb of the requirements is made out, I carefully reviewed the viva voce as well as the documentary evidence which has been presented in this matter.

**[109]** The situation also falls to be examined in light of the Defendant's assertion that the Claimant wilfully expended funds on the property in spite of efforts to stop him. The efforts, as the Court heard from Ms. Grant, involved numerous conversations during which the Claimant verbally abused her. She also sought to obtain a Power of Attorney to have legal standing to prevent his actions. She asserted that this Power of Attorney was stolen by the Claimant. In support of her contention in this regard, Ms. Grant exhibited slips as proof of reports made to the Police. The Claimant for his part denied stealing the Power of Attorney, denied bullying Ms. Grant and insisted he had obtained permission to engage in construction and the problems only emerged after he informed Mr. Robinson that the Certificate of Title was almost ready.

**[110]** In my review of the documents presented by the Defendant, I observed that the report in respect of the stolen Power of Attorney is dated March 14<sup>th</sup>, 2022 and the

report for the dispute bears the date March 10<sup>th</sup>, 2022. The Certificate of Title is dated March 16<sup>th</sup>, 2022. I have considered whether it was mere coincidence that both reports were in such close proximity to the issue date of the Certificate of Title and I am unable to conclude that it was, as based on Ms. Grant's evidence these incidents and reports would have been some time before the Certificate of Title was ready. I find that the timing of these reports provides strong support for Mr. McDonald's assertion. They also betray a deliberate attempt on the part of the Defendant, in conjunction with his spouse, to reap the benefit of the Claimant's financial expenditure and labour having deceived him into acting to his own detriment.

**[111]** It was the evidence of Ms. Grant that Mr. McDonald constructed the building at the back of the premises in 2017 and the building at the front in 2021. She did not agree that the buildings were constructed after a conversation in December 2021 about the Claimant bringing in machines. In assessing her evidence on this point, I carefully considered the report which was made to the KSAMC. It was observed that similar to the Police Report that report bore no name as to the 'offending party.' It was dated the 20<sup>th</sup> of November 2020, which by her account would not accord with the period of construction by the Claimant. While it may be argued that she could be mistaken as to the dates, the Court notes that she was very firm in her rejection of this suggestion during cross-examination. Mr. McDonald, on the other hand, was consistent in his assertion that this investment occurred after permission was received in 2021.

**[112]** The dates on the Power of Attorney and Police Report in respect of the alleged assault by the Claimant are significant in another respect. They provide cogent evidence in support of the Claimant's assertion that he was engaged in construction at the property in 2022. It was the evidence of Ms. Grant that the Power of Attorney was obtained to stop the construction. Additionally, the badness was displayed to her by the Claimant during the construction. If her evidence on the timing of these documents is to be accepted, this clearly shows that the construction would have been in 2022 and not 2017 and 2021 as she asserted.

[113] My assessment of the reliability of the Defendant and his witness on these matters weighed more heavily in favour of the Claimant. Their accounts were inconsistent and even contradictory in nature. While Ms. Grant stated that the discussion in respect of the machines had included permission for a little shed to be built to house them, Mr. Robinson insisted that he had refused to give permission for anything to be built in this regard. Accordingly, the Court finds that the Claimant relied on the representation made to him by Mr. Robinson and acted to his detriment by expending a substantial amount of money on construction on the property after receiving permission from the Defendant in December 2021 and did so in the belief that he would have sole beneficial interest in the property.

### **ISSUE 3: Unconscionable disadvantage/detriment**

[114] In light of the foregoing discussions and findings, it bears repeating that the evidence has shown a causal link between the representation relied on by the Claimant and the precarious financial position in which he now finds himself if the Defendant is allowed to retract his promise and resile from the assurances he gave him. Mr. McDonald asserted that in reliance on their verbal Agreement, he invested **Four Million Three and Six Thousand Six Hundred and Five Dollars (\$4,306,605.00)** in construction work at 82 ½ Waltham Park Road.

[115] In respect of the receipts presented, while they disclosed expenditure amounting to just under **One Million Dollars (\$1,000,000.00)**, the receipts did not bear the Claimant's name and rarely made reference to a place of delivery. Where this was stated, it was not the address at Waltham Park. What is evident however is that two (2) buildings were constructed on the property, one of which was large in size as Ms. Grant referred to it as a 'factory.' While the Court has identified challenges in accepting the sum proffered by the Claimant, it goes without saying that substantial sums must have been expended in raising these buildings which could only have added to the value and attractiveness of the property itself from which the Defendant would have derived a benefit.

[116] In their evidence, the Defendant and his spouse acknowledged that the property in which they had lived was a board structure. This was upgraded to a concrete structure subsequent to the assistance being provided by the Claimant.

[117] Although Mr. Robinson and Ms. Grant denied that there had been any conversations about selling the property, Mr. Robinson acknowledged that there had been a conversation about Radiator Man having an interest. Interestingly, he denied that Mr. McDonald had proposed purchasing the property from him for **Six Million Dollars (\$6,000,000.00)** and insisted that this conversation was had with his mother who informed him of it. This begged the question, if it is to be accepted as stated by Mr. Robinson, that both men spoke often on the phone and Mr. McDonald was assisting him to obtain the Certificate of Title, why would this conversation be held with his mother who would have no interest in the property. This explanation appeared to be nothing more than another attempt to reject the fact that there had in fact been a conversation about the purchase of the property by Mr. McDonald. The Court accepts that it is more probable than not that this is what led him to invest in the property as heavily as he did. Upon a careful consideration of the Defendant's evidence and observation of his demeanour under cross-examination, I was not impressed with him. As previously stated, I found his account to be contradictory and subject to adjustments and I was left with the impression that he was not being truthful with the Court. I was similarly not impressed by the quality of Ms. Grant's evidence.

[118] Before leaving the issue of the Defendant's credibility, special mention must be made of the fact that in the course of his response to a question, the Court observed that someone could be heard saying 'no' seemingly in response to the question asked by opposing Counsel. As noted in the evidence, the Court's enquiries revealed this to be his mother. In analysing this situation, the Court finds that this was yet another indication of questionable conduct bordering on dishonesty on the part of the Defendant. He would have been aware that he should be in a sanitised room and not in communication with anyone. The Court was also left to wonder how long this interaction had been taking place and how much of

his evidence had been on instructions as he had already been subjected to extensive cross-examination at the point when the 3<sup>rd</sup> party's response became audible.

[119] On the other hand, I find that the Claimant is a witness of truth. He appeared to be an honest and candid witness who provided clear and cogent evidence. I was also impressed with the evidence of his witness, Mrs. Jodi-Ann McDonald and believe that they gave honest accounts of what had transpired.

[120] Accordingly, I find as a fact that there was a representation given by the Defendant to the Claimant on which he relied and acted to his detriment.

[121] This Court is empowered by the equitable maxim, "*equity will not suffer a wrong without a remedy*" and finds that the Claimant has acquired an equitable interest in the Defendant's property at 82 ½ Waltham Park Road by reason of proprietary estoppel. The Defendant is therefore estopped from denying the Claimant a beneficial interest in the property.

### **Specific Performance**

[122] In addition to the submission that proprietary estoppel applies and the property should be sold as agreed, Counsel has also asked for an order for specific performance compelling the Defendant to complete the sale pursuant to the verbal agreement to sell it to the Claimant. The authorities on the point disclose that the absence of a written agreement/contract could not by itself operate to prevent the enforcement of an oral contract.

[123] It is the evidence of Mr. McDonald and his witness that pursuant to the conversation about the offer by Radiator Man to purchase the property for **Three Million Dollars (3,000,000.00)**, he had indicated that he would pay double this amount regardless of the value. Mr. McDonald says no objection was voiced to this figure and it was following this agreement that the ball was set in motion for meetings with the Attorney and the Application for the Certificate of Title. While Mr.

Robinson has insisted that the conversation was held with his mother, he did not refute the figure stated.

[124] In my consideration of this request, the credibility of the respective parties was once again relevant to the question of whether there had been an agreement for the sale of the property in this amount. I also considered the Tax Certificate from the Tax Administration of Jamaica dated April 4<sup>th</sup>, 2022, which places the unimproved value of the property at **Six Million Nine Hundred Thousand Dollars (\$6,900,000.00)** and provides its size as **8,680 square metres**.

[125] Given that this agreement would have been in 2016 or before, I believe that the sum which Mr. McDonald offered for the property had been agreed on and accepted by the Defendant. Based on the documentary evidence, it was not an unreasonable sum and I believe that this was why Mr. Robinson raised no objection. What is apparent is that with the passage of time and the construction by Mr. McDonald, the property has likely appreciated in value. I am satisfied that this resulted in a change of heart in Mr. Robinson which was no doubt influenced by his partner.

[126] I am satisfied that there is cogent and believable evidence of this oral agreement. I believe that in light of his pending migration, Mr. Robinson offered to sell his friend and employer the property and the actions to obtain Certificate of Title were taken to facilitate this. I believe that it was the intention of the Parties that this verbal agreement would be honoured once the Certificate of Title was obtained and the plans were only scuttled because of Ms. Grant. I am satisfied on a balance of probability that there should be specific performance of this agreement and the Defendant should not be permitted to resile from it.

## **CONCLUSION**

[127] Having carefully reviewed all the evidence which had been presented in support of this claim, the Court finds that the Claimant has proved his case.

[128] In light of the foregoing, I hereby make the following orders:

1. The Claimant, Tossaint McDonald, is entitled to a beneficial interest in ALL that parcel of land part of **HAGLEY PARK PEN KNOWN AS ADELAIDE PARK** in the parish of **SAINT ANDREW**, being Lot Number One now known as 82 ½ Waltham Park Road, Kingston 11, in the parish of Saint Andrew and being all of the land comprised in Certificate of Title registered at **Volume 1560 Folio 235** of the Register Book of Titles ("**Subject Property**");
2. By virtue of the doctrine of proprietary estoppel, the Defendant, Anthony Robinson is estopped from dealing with the property situated at ALL that parcel of land part of **HAGLEY PARK PEN KNOWN AS ADELAIDE PARK** in the parish of **SAINT ANDREW**, being Lot Number One now known as 82 ½ Waltham Park Road, Kingston 11, in the parish of Saint Andrew and being all of the land comprised in Certificate of Title registered at **Volume 1560 Folio 235** of the Register Book of Titles ("**Subject Property**").
3. The Defendant or his servants or agents are restrained from demolishing, damaging or removing the structure built by the Claimant on the subject property.
4. The Defendant whether by himself or by his servants or agents or otherwise are restrained from interfering with, disposing of by sale, or otherwise dealing with the Subject Property in any manner inconsistent with the understanding or common intention for the Property to be sold to the Claimant.
5. Specific Performance compelling the Defendant to transfer by sale, the Subject Property to the Claimant is granted.
6. A Valuation is to be done by a reputable Valuator agreed between the Claimant and Defendant to determine the extent of the Claimant's interest in the Subject Property and the Claimant within thirty (30) days

of producing the Valuation Report can purchase the same from the Defendant for its current value.

7. The Registrar of the Supreme Court is empowered to appoint a reputable Valuator if either party refuses or fails to agree on a Valuator.
8. The cost of the Valuation is to be borne equally by the parties.
9. A Quantity Surveyor's Report is to be obtained from a Quantity Surveyor.
10. The cost of the Quantity Surveyor's Report is to be borne equally by the parties.
11. The Registrar of the Supreme Court is to sign the Instrument of Transfer and any other document required to complete the transfer of the Subject Property to the Claimant if the Defendant is unable or unwilling to do so;
12. Costs to the Claimant to be taxed, if not agreed.
13. The Claimant's Attorney-at-law is to prepare, file and serve the Judgement herein.
14. Liberty to apply.