

THE EASTERN CARIBBEAN SUPREME COURT

SAINT LUCIA

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

CLAIM NO. SLUHCv2023/0162

BETWEEN:

ARNO JN MARIE

Claimant

-and-

ESTATE OF LAURETTA CANCHON also called
LAURETTA JOSEPH represented by **VERONICA ESTHER CANCHON**

Defendant

Before the Honourable Mr. Justice Alvin Shiva Pariagsingh

Appearances:

Mrs. Lydia B. Faisal for the Claimant

Mr. C. Vern Gill for the Defendant

2026: May 04 – Trial
June 1, 5, 29 – Submissions
September 28 – Decision

JUDGMENT

Land – Agreement for sale of land – Oral agreement – Receipts – Payment of purchase price – Proprietary estoppel – Assurance – Reliance – Detriment – Unconscionability – Possession – Long occupation – Survey plan – Equitable interest in land – Prescription – Laches – Acquiescence – Transfer of land – Equitable relief – Costs.

INTRODUCTION:

[1] **PARIAGSINGH, J:** - This claim concerns a dispute over an alleged agreement for the sale of land at Herelle, Laborie, said to have been made in 1997 between the Claimant, Arno Jn. Marie, and the late Lauretta Canchon. The Claimant contends that Lauretta agreed to sell him 10,000 square feet of land for \$20,000.00, that he paid the purchase price, entered into possession and acted for many years in reliance on her promise.

- [2] The Defendant, representing Lauretta's estate, denies that any such agreement was made, disputes the alleged payments and the authenticity of the receipts relied upon by the Claimant and maintains that the Claimant acquired no legal or beneficial interest in the property. The Court is therefore required to determine, on a balance of probabilities, whether the alleged transaction occurred, what rights, if any, arose from it and whether the Claimant is entitled to the equitable relief he seeks.

Claimant's case:

- [3] The Claimant says that in 1997 he was introduced to Lauretta Canchon by her son Stephen. He says Lauretta agreed to sell him 10,000 square feet of land for \$20,000.00 and showed him the proposed partition plan for the family land from which his portion was to come.
- [4] He says he paid the full \$20,000.00 in two instalments and that Lauretta gave him two receipts dated 30 September 1997, which she signed in his presence. He says he is largely unable to read and write and did not realise that the receipts referred to about 5,000 square feet rather than the 10,000 square feet he says had been agreed.
- [5] The Claimant says that after payment he went into possession, built a shed, cultivated the land and remained there for many years. When no transfer was completed, his lawyers wrote to Lauretta in 2003 asking her to complete the sale.
- [6] He also relies on a 2006 survey showing the delineation of an area comprising 5,343 square feet, which he says was in the same area he occupied and was said to be land surveyed for him. He maintains, however, that the original agreement was for 10,000 square feet.
- [7] His case is that he paid the purchase price, relied on Lauretta's promise, remained in possession and acted to his detriment. He therefore seeks recognition of his interest in the land and an order for transfer, principally of 10,000 square feet or alternatively the surveyed 5,343 square feet.

Defendant's case:

- [8] The Defendant denies that Lauretta ever entered into the transaction alleged by the Claimant. The Defence disputes that Lauretta received \$20,000.00 from the Claimant,

denies that she agreed to sell him land and challenges the authenticity of the 1997 receipts. The Defendant also disputes that the signatures on the receipts are Lauretta's and points to discrepancies in the spelling of Lauretta's name on the documents.

[9] The Defendant says there was no written agreement for the sale of 10,000 square feet and no promise by Lauretta to transfer land to the Claimant. The Defence also relies on Lauretta's later conduct, including the 2013 notice to quit, as showing that she regarded the land as her own. It also relies on an alleged letter dated 24 November 2003, said to have been sent in response to the Claimant's earlier solicitor's letter, denying the transaction.

[10] The Defendant further disputes the Claimant's account of continuous occupation and says he had no legal or beneficial interest in the property.

Claimant's Reply:

[11] In his Reply, the Claimant maintains that the transaction took place and says his conduct over the years supports that account. He repeats that Lauretta promised him 10,000 square feet for \$20,000.00, personally received the money and signed the receipts in his presence. He says he cannot explain any errors in the receipts because he relied on Lauretta to tell him what they contained.

[12] He also relies on the fact that he went into possession, wrote to Lauretta through lawyers in 2003, later registered a caution and continued to assert an interest in the land. He says he would have had no reason to take those steps if the transaction had been invented.

[13] The Claimant places particular weight on the 5,343 square feet survey. He says the Defendant has not explained why that parcel was demarcated from Lauretta's land in the same area he occupied if there had never been any arrangement between them.

[14] He also strongly denies receiving the alleged November 2003 response and says the Defendant must prove that it was ever sent to him. He maintains that he never left the land and that his claim is based on the promise, payment and reliance, not simply on long possession.

ISSUES:

[15] The issues for determination are:

- 1) Whether the Deceased agreed or promised to sell land to the Claimant, and if so, whether the agreement was for 10,000 square feet at a cost of \$20,000.00.
- 2) Whether the Claimant paid the Deceased \$20,000.00 and whether the receipts dated 30 September 1997 were issued and signed by her.
- 3) Whether the Claimant took and remained in possession of the land in reliance on the Deceased's promise.
- 4) What weight should be given to the later correspondence, the 5,343 square feet survey, the notice to quit and the cautions.
- 5) Whether the Claimant has established a proprietary estoppel.
- 6) Whether the claim is affected by prescription, delay, laches or acquiescence.
- 7) If the Claimant succeeds, what interest in the land he is entitled to and what relief should be granted.

EVIDENCE AND FINDINGS:**Arno Jn Marie, the Claimant:**

[16] The Claimant adopted his witness summary as his evidence in chief. He explained that he is most comfortable speaking Creole, has only a limited understanding of English and cannot read English documents for himself. He said that documents have to be read and explained to him before he can properly understand them. Nevertheless, in the interest of fairness to the Claimant, the Court Interpreter read back the Claimant's witness summary to him in Creole, before he accepted it as his evidence in chief.

[17] His evidence was that he dealt directly with the Deceased after being introduced to her by her son, Stephen. He said that he paid her money for land, that she gave him receipts and that he relied on what she told him about the amount of land he was purchasing because he

could not read the documents himself. He accepted that the receipts did not record 10,000 square feet, but maintained that the oral agreement was for that amount.

[18] He also described his occupation and use of the land. He said that after payment he began cultivating the property, planted crops and trees and erected a small shed which he used while working there. Although the shed was later damaged, he maintained that he never gave up his occupation of the land.

[19] The Claimant further said that he continued to pursue the transfer over the years. He referred to the 2003 solicitor's letter, the later survey of 5,343 square feet, the 2013 notice to quit and the cautions which he subsequently lodged. He denied receiving any reply to the 2003 letter and maintained throughout that he continued to regard the land as land for which he had paid.

[20] In cross-examination, the Claimant maintained the essential parts of his account, although a number of matters were tested which affect the weight to be given to his evidence.

[21] He accepted that his signature appeared on the receipts. He maintained, however, that the contents were not read to him before he signed them. This was important because his evidence in chief was that he could not read the documents and had relied on what the Deceased told him.

[22] The Claimant was questioned about the source of the \$20,000.00. He was unable to produce a bank book or other record showing the withdrawal of the first \$10,000.00 and he could not produce a money-order receipt or other documentary proof that his mother had sent the second \$10,000.00. He maintained that the payments had nevertheless been made. He also accepted that the two payments were made on different occasions, although both receipts bear the same date.

[23] The receipts themselves presented a difficulty for him. In cross-examination he accepted that a measurement of 50 feet by 100 feet appearing on the receipt amounted to approximately 5,000 square feet. That is inconsistent with the 10,000 square feet which he says was orally promised to him. He nevertheless maintained that the oral agreement was

for 10,000 square feet and that he had not known what was written in the receipts when he signed them.

[24] He was also questioned about the partition documents and the fact that the Deceased did not become the registered owner of the relevant parcel until the court order of 2010 and subsequent deed of partition in 2011. The Claimant did not profess knowledge of the legal title arrangements and maintained that he had relied on what the Deceased told and showed him.

[25] The Claimant accepted receiving the 2013 notice to quit. He was pressed on the fact that he did not commence proceedings against the Deceased between 2013 and her death in 2018. His response was substantially that he had taken the matter to his lawyer. He nevertheless denied that he left the land after receiving the notice to quit and repeatedly maintained that he remained in occupation of the land.

[26] As to the 2006 survey, the Claimant was questioned about his conversation with Leroy Canchon. It appears from the cross-examination that the Deceased herself was not present when Leroy spoke to him.

[27] The Claimant also continued to deny receiving the alleged letter dated 24 November 2003. The document was put to him, but the cross-examination did not establish that it had actually been delivered to or received by him.

[28] Finally, it was put to the Claimant that approximately 26 years had passed between the alleged 1997 transaction and the filing of the present proceedings in 2023. He did not accept the suggestion that this demonstrated that there had never been an agreement.

Findings arising from the Claimant's evidence

[29] On a balance of probabilities, I find as follows. First, I do not treat the Claimant's difficulty answering some questions as, by itself, evidence of dishonesty. His evidence from the outset was that he primarily communicates in Creole and cannot read English. The hearing required interpretation.

[30] Second, the cross-examination did not materially dislodge his evidence that some transaction concerning land took place. He continued to maintain that he paid money to the Deceased, was given receipts and thereafter went into occupation. Importantly, he was not shaken from that basic account.

[31] Third, the cross-examination exposed a significant weakness in his contention that the agreement was specifically for 10,000 square feet. The written receipts point to approximately 5,000 square feet and the later survey produced approximately 5,343 square feet. Those two pieces of documentary evidence sit more comfortably with an arrangement for about 5,000 square feet than with the Claimant's oral evidence of 10,000 square feet. His explanation is that, because he could not read, he did not know that the receipts differed from the oral agreement. I do not however, prefer the Claimant's recollection of the oral conversation over the contemporaneous documents.

[32] Fourth, while the absence of banking or money-order records weakens the documentary proof of payment it does not necessarily defeat the Claimant's case. The alleged payments were made in 1997. I accept the receipts and the surrounding conduct as evidence that money changed hands. The absence of supporting financial records is therefore a matter of weight rather than necessarily fatal to the claim.

[33] Fifth, the fact that both receipts bear the same date even though the Claimant says the payments were made on different dates is another unexplained inconsistency. It is a matter which reduces the weight which can safely be placed on the receipts as a precise record of the transaction. It does not, however, in my view necessarily establish that the receipts or the underlying transaction were fabricated.

[34] Sixth, I would attach limited weight to the Claimant's evidence that the 2006 survey was commissioned by the Deceased specifically for him. His knowledge of that matter came through Leroy Canchon and the Deceased was not present during that conversation. The existence and location of the survey remain objective circumstances capable of supporting the Claimant's alternative claim.

[35] Seventh, the delay in commencing proceedings is a legitimate matter for consideration, particularly after the 2013 notice to quit. However, the evidence does not support a finding that the Claimant simply did nothing for 26 years. There had been a solicitor's demand in 2003, further correspondence in 2015, cautions and later steps involving the estate.

[36] Eighth, the cross-examination did not obtain an admission that the Claimant abandoned possession. He consistently denied leaving the land and explained that the shed was lost through storm damage. There was no contrary evidence from the Defendant or her witnesses which the Court preferred on this issue.

[37] Overall, I found the Claimant's evidence imperfect in a number of respects. There are difficulties concerning the wording and dating of the receipts, the absence of independent proof of the payments and, most significantly, the inconsistency between his evidence that he purchased 10,000 square feet and the documentary references to approximately 5,000 square feet. Those matters require caution. I am not, however, satisfied that they establish that the entire transaction was fabricated. The Claimant remained consistent on the central features of his account: that he dealt with the Deceased, paid her money in relation to land, received receipts and thereafter entered into occupation. His subsequent conduct, including the early solicitor's demand and continued assertion of an interest in the property, lends some support to that account.

[38] I therefore find, on a balance of probabilities, that there was a transaction concerning land between the Claimant and the Deceased. Whether the Claimant has proved that the transaction was for the full 10,000 square feet claimed is a separate question and, in my view, is considerably less certain.

Defendant – Veronica Esther Canchon

[39] Veronica Canchon adopted her witness summary as her evidence. She said that she is the executrix of her mother Lauretta Canchon's estate, lives in England and only visits Saint Lucia from time to time. She did not know the Claimant personally. Her evidence was that she became aware of the dispute when her mother received the Claimant's solicitor's letter in 2003.

[40] She relied on the alleged November 2003 response in which the Deceased is said to have denied the Claimant's allegations and disputed the signatures on the receipts. She also relied on the fact that, in 1997, her mother did not yet have registered title to a specific parcel of the family land.

[41] As to the 5,343-square-foot survey, Veronica accepted in her witness summary that she could not explain how the survey came about, although she understood that Leroy Canchon had some involvement in it. Her case was that once the Deceased's title was settled, the Deceased caused the 2013 notice to quit to be sent to the Claimant. She believed that the Claimant then left the property and only returned to clear it after the present dispute arose.

[42] Veronica's overall position was that there had been no agreement between her mother and the Claimant. She relied on the disputed receipts, the difference between the square footage claimed and the square footage stated in the documents, and the 2013 notice to quit as supporting the estate's position.

[43] Cross-examination established an important limitation on Veronica's evidence. She accepted that she was born in England, was not living in Saint Lucia in 1997 and had no personal knowledge of what occurred between the Claimant and the Deceased at the time of the alleged transaction. She also accepted that she did not know the Claimant personally and had never had any dealings with him.

[44] She accepted that her knowledge of the Claimant's occupation came from the documents rather than from anything she personally observed. She was also unable to say whether the Deceased had ever taken court proceedings to remove the Claimant after receiving his 2003 solicitor's letter.

[45] In relation to the alleged November 2003 response she accepted that the document was not addressed to the Claimant and that she had no evidence that he ever received it. She could not say whether he had seen it before these proceedings.

[46] She was also taken to the Deceased's later 2015 correspondence. She accepted that saying the Deceased did not "recollect" receiving money was not the same as saying categorically that she had never received it.

[47] The survey was another significant area of cross-examination. Veronica accepted that the 2006 survey plan was made at the instance of her mother. She had never asked her mother why 5,343 square feet had been delineated from the relevant land and could not explain why the survey was undertaken. She also accepted, in substance, that her mother did not tell her everything concerning her affairs.

[48] Her evidence that the Claimant had vacated the property was also weakened. She accepted that this was something she had been told and that she had no personal knowledge that he had in fact left.

[49] On the disputed signatures, Veronica maintained her belief that the writing on the receipts was not that of her mother's. However, she accepted that she was not a handwriting expert. Her opinion was based on her familiarity with her mother's handwriting rather than expert evidence.

Findings arising from Veronica's evidence

[50] I find that Veronica was able to give reliable evidence about the administration of the estate and matters which occurred after she became involved, but that her evidence carries limited weight on the central events of 1997.

[51] She simply was not present for the alleged agreement, payment or signing of the receipts. Her evidence cannot directly contradict the Claimant's account of those events.

[52] The cross-examination also materially weakened her evidence that the Claimant had abandoned the land. That assertion was based on what she had been told rather than on her own observation.

[53] I also treat her opinion concerning the signatures with some caution. She was entitled to say that the writing did not appear to her to be her mother's, but she was not an expert and did not witness the receipts being signed.

[54] More significantly, her inability to explain the 2006 survey commissioned in her mother's name leaves an important part of the Claimant's case unanswered. While it does not prove that the survey was undertaken for the Claimant, it is objective evidence requiring some explanation if there had never been any arrangement concerning the land.

[55] Overall, I accept that Veronica genuinely believes that no transaction took place between her mother and the Claimant. Her difficulty, however, is that she had no personal knowledge of the events of 1997. Much of her evidence concerning the transaction, the Claimant's occupation and his alleged departure from the land was based on information received from others. Her evidence therefore does not directly contradict the Claimant's account of his dealings with the Deceased.

Defendant's witness - Wilson Canchon

[56] Wilson Canchon said that the Deceased was his aunt and that he knew both the Claimant and the land in dispute. He lives and operates a business a few hundred feet from the property.

[57] His evidence was directed mainly to the question of occupation. He said that he knew the Claimant had previously occupied the land, cultivated it and had a shed there. According to him, sometime in 2013 he formed the view that the Claimant had left because the property became overgrown and the shed disappeared. He said that in May 2025 he saw the Claimant clearing the land again.

[58] Wilson did not give evidence that he witnessed the alleged 1997 agreement, payment of money or signing of the receipts.

[59] In cross examination Wilson accepted that the distance between his business and the land was only an estimate and, importantly, that he could not see the property from his business premises.

[60] He was questioned about the disappearance of the Claimant's shed. He accepted that he did not see the Claimant dismantle or remove the shed and did not see him remove his

crops from the property. He was also unable to say from personal observation that the Claimant had actually abandoned the land.

[61] Although Wilson said that he had visited the property on occasions, he could not provide dates or times for those visits. He said that photographs had been taken, but none were produced to the Court.

Findings arising from Wilson's evidence

[62] Wilson's evidence is of very limited assistance on the main dispute. He had no knowledge of the alleged transaction in 1997 and therefore could not assist the Court on whether an agreement was made, whether \$20,000.00 was paid or whether the receipts were genuine.

[63] His evidence was relevant to the narrower question of possession, but cross-examination substantially reduced its weight. He could not see the land from his business, did not visit it regularly, did not see the Claimant remove the shed or crops and could not provide dates for the occasions on which he inspected the property.

[64] His observation that the property became overgrown and the shed disappeared may support an inference that the Claimant's use of the land became less regular. It does not, however, establish that the Claimant abandoned possession altogether.

[65] Overall, I accept Mr Canchon's evidence that the land appeared less actively cultivated for a period and that the shed was no longer present. I do not, however, accept that his evidence establishes that the Claimant abandoned the land in 2013. He did not see the Claimant remove the shed or crops, could not observe the property from his business premises and gave no dates for the visits upon which his conclusion was based.

[66] Taken together, the evidence of Veronica and Wilson does not provide direct evidence contradicting the Claimant's account of the 1997 transaction. Neither was present when the alleged agreement was made, when the money was said to have been paid or when the receipts were allegedly signed.

[67] Their evidence is more useful on the later history of the property. Even there, however, the cross-examination exposed significant limitations. Veronica's evidence about the Claimant

leaving the property was second-hand, while Wilson's evidence did not establish that he actually witnessed an abandonment.

ANALYSIS OF THE ISSUES:

Whether the Deceased agreed or promised to sell land to the Claimant

[68] The central question is whether there was in fact a transaction between the Claimant and the Deceased and, if so, what land was the subject of it.

[69] The Defendant's position is that no agreement existed and that the receipts cannot establish an enforceable contract. The Defendant relies on the absence of a formal written agreement and on the discrepancies appearing on the receipts. The Claimant, on the other hand, says that there was a clear oral agreement which he acted upon and that the absence of a formal conveyance does not defeat his equitable claim.

[70] Having considered the evidence as a whole, I am satisfied on a balance of probabilities that there was a genuine transaction concerning land between the Claimant and the Deceased. The Claimant remained consistent on the essential features of his account: that he dealt directly with the Deceased, paid her money, received receipts and thereafter entered into occupation. His evidence was not materially displaced in cross-examination.

[71] That finding is also supported by the surrounding circumstances. The Claimant asserted his interest through counsel as early as 2003, long before the present proceedings and continued to assert that interest thereafter. Neither Veronica nor Wilson Canchon had personal knowledge of the 1997 transaction and neither could directly contradict the Claimant's evidence concerning the agreement, payment or execution of the receipts.

[72] The difficulty arises as to the extent of the land promised. The Claimant maintained that the agreement was for 10,000 square feet. However, the receipts refer to approximately 5,000 square feet, and the 2006 survey produced identifies approximately 5,343 square feet. Those contemporaneous documents sit more comfortably with an arrangement for approximately 5,000 square feet than with the Claimant's recollection of 10,000 square feet.

I therefore do not prefer his recollection of the oral agreement over the documentary evidence.

[73] I therefore find that there was an agreement or assurance concerning land, but that the Claimant has not proved that it was for 10,000 square feet.

Whether the Claimant paid the Deceased \$20,000 and whether the receipts were issued by her

[74] The Defendant points to the absence of bank records, withdrawal slips and proof of the remittance said to have been sent by the Claimant's mother. The Claimant was unable to produce any such records in cross-examination.

[75] That absence weakens the documentary proof of payment, but it is not fatal. The transaction occurred in 1997 and the absence of banking records nearly three decades later must be considered in that context.

[76] More importantly, I accept the receipts and the surrounding conduct as evidence that money changed hands. The Claimant relied upon the receipts as early as 2003 when his solicitor demanded transfer of the land. They were therefore not documents first produced for the purposes of this litigation.

[77] There are difficulties with the receipts. Both bear the same date although the Claimant says the payments were made on separate occasions. That unexplained inconsistency reduces the weight which can safely be placed on them as a precise record of the transaction. It does not, however, establish that the receipts or the underlying transaction were fabricated.

[78] The Defendant also relies on the misspelling of the Deceased's name on the receipts as a circumstance casting doubt on their authenticity. I have taken that matter into account. The Claimant's evidence is that he could not read the receipts and therefore could not explain the spelling used in them. The misspelling is a legitimate irregularity and is another reason for treating the documents with some caution. Standing alone, however, I do not consider it sufficient to establish that the receipts were fabricated, particularly when they are considered

together with the Claimant's early reliance on them in 2003, his occupation of the land and the later survey.

[79] I have also considered the Defendant's challenge to the signatures. Veronica believed that the writing was not her mother's. I attach limited weight to that evidence because Veronica was not present when the receipts were signed and is not qualified as a handwriting expert. Her evidence on this point cannot be accepted. The Claimant's submissions, which I accept, also point out that no handwriting expert was called, and no original passport was produced for comparison.

[80] I therefore find, on a balance of probabilities, that the Claimant paid the Deceased \$20,000.00 in connection with the acquisition of land and that the receipts were issued as evidence of that transaction.

Whether the Claimant took and remained in possession in reliance on the transaction.

[81] I accept the Claimant's evidence that, following the transaction, he entered upon the land, cultivated it and erected a shed. The Defendant sought to establish that he later left the land, particularly after the 2013 notice to quit. That evidence was not persuasive.

[82] Veronica accepted that her belief that the Claimant had vacated the land was based on what she had been told rather than on her own observation. Wilson's evidence was similarly limited. He could not see the land from his business premises, did not visit regularly, did not see the Claimant remove his shed or crops and could give no dates for the visits upon which he relied.

[83] I accept Wilson's evidence that the land may have been less actively cultivated for a period and that the shed eventually disappeared. That does not establish abandonment.

[84] The Claimant consistently denied leaving the land, and the cross-examination did not produce any admission of abandonment. I therefore find that although his use of the land may have varied over the years, he did not abandon his possession or his asserted interest.

The later correspondence, survey, notice to quit and cautions

[85] The later documents are useful because they help test the competing accounts. The 2003 solicitor's letter is significant. By then the Claimant was already asserting that he had paid for land and was seeking completion of the transaction. This is consistent with the Claimant's evidence that he has understood himself to have acquired an interest in land in 1997 and that his claim was not recently invented.

[86] The Defendant relies on the alleged November 2003 response. I would not make a finding that the letter was fabricated. There is insufficient evidence for such a conclusion. Equally, I cannot attach substantial weight to the letter as proof that the Claimant was informed in 2003 that the Deceased rejected his claim. Veronica accepted that the letter was not addressed to the Claimant, the evidence does not establish that it was transmitted to him and the Claimant consistently denied receiving it. I therefore give the document limited weight as evidence that the Claimant was actually informed in 2003 that his claim had been rejected.

[87] The 2015 correspondence is also relevant. The Deceased's position was expressed in terms of not recollecting the transaction or receipt of the money. Veronica accepted that an absence of recollection is not the same as a categorical denial that the transaction occurred.

[88] The 2006 survey is important, but it must be treated carefully. I attach limited weight to the Claimant's evidence that the survey was commissioned specifically for him because that evidence came through Leroy Canchon and the Deceased was not present when Leroy spoke to the Claimant.

[89] The existence and location of the survey are nevertheless objective facts. Veronica accepted that the survey was commissioned in her mother's name and could not explain why 5,343 square feet had been surveyed. She also accepted that her mother did not tell her everything about her affairs.

[90] I therefore do not treat the survey as proof of the precise instructions given by the Deceased, but I do regard it as supporting evidence that some arrangement concerning a parcel of approximately that size existed.

[91] The 2013 notice to quit shows that by then the Deceased was asserting ownership against the Claimant. It does not establish that no earlier transaction had occurred.

[92] The cautions similarly do not prove ownership, but they are consistent with the Claimant continuing to assert the same interest over time.

Whether proprietary estoppel is established

[93] The Claimant relies on **Taylors Fashions Ltd v Liverpool Victoria Trustees Co Ltd**¹, **Gillett v Holt**², **Crabb v Arun District Council**³, **Thorner v Major**⁴ and **Guest v Guest**⁵.

[94] The principle drawn from **Taylors Fashions** is that proprietary estoppel is ultimately concerned with preventing unconscionable conduct. In **Gillett v Holt**, the court emphasised that assurance, reliance and detriment are not to be treated as separate and rigid compartments but must be considered together in determining whether it would be unconscionable to permit the promisor to resile.

[95] **Thorner v Major** confirms that the assurance need not be express, but must be sufficiently clear in its context to justify reliance, while **Crabb** demonstrates that equity may intervene where a person acts to his detriment on the faith of an assurance relating to land.

[96] Applying those principles, I am satisfied that the elements of proprietary estoppel are established.

[97] There was an assurance concerning land. Although I do not accept that the Claimant has proved an assurance of 10,000 square feet, I am satisfied that there was a sufficiently clear assurance that he would receive a parcel of land of approximately 5,000 square feet in return for his payment.

[98] There was reliance. The Claimant paid the money, entered into possession, cultivated the land and treated it as property which he expected eventually to receive.

¹ [1982] QB 133

² [2001] Ch 210

³ [1976] Ch 179

⁴ [2009] UKHL 18

⁵ [2022] UKSC 27

[99] There was detriment. The payment of \$20,000.00 was itself substantial. In addition, the Claimant spent time and labour cultivating and maintaining the land and continued to organise his affairs on the footing that he had acquired an interest in it.

[100] Finally, there is unconscionability. On the findings I have made, the Deceased received the Claimant's money, allowed him into possession and did not return the purchase price. In those circumstances, it would be inequitable for the estate to retain both the money and the land while recognising no interest at all in the Claimant.

[101] The Claimant distinguishes **Yeoman's Row Management Ltd v Cobbe**⁶ on the basis that it concerned sophisticated commercial parties negotiating in circumstances where they knew there would be no binding arrangement until formal documentation was executed. This case is materially different. Here, the money was paid and possession followed.

[102] I therefore find that the Claimant has established a proprietary estoppel. In **Cenac and others v Schafer**⁷ the Privy Council held that an equitable interest in land is valid and enforceable.

Whether the claim is barred by prescription, laches or delay

[103] There are also preliminary issues concerning prescription and laches. The Defendant did not plead prescription or laches in the Defence. The issue was raised principally in the Defendant's submissions and in cross examination. The Claimant relies on **Sivanandan v Executive Committee of Hackney Action of Racial Equality**⁸ for the proposition that a factual issue which may affect the outcome of a case should ordinarily be pleaded so that the opposing party knows the case which has to be met. These propositions are not new or novel.

⁶ [2008] UKHL 55

⁷ [2016] UKPC 25

⁸ [2002] EWCA Civ 111

[104] Prescription is not a defence like limitation. It goes to jurisdiction. There is a fundamental difference. Once time is prescribed, the Court has no jurisdiction, see **Walcott v Serieux**⁹. In this regard, it arises based on the operation of law.

[105] Article 2052 of the Civil Code provides that the Court is not to consider prescription of its own motion, save in the circumstances provided for by Article 2129.¹⁰ The Court of Appeal has confirmed in **Della Vallery Nolan née Jude v Diane Jude**¹¹ that where prescription has not been pleaded and the claim does not fall within the Article 2129 exception, a defendant is precluded from relying upon prescription without the claimant having had proper notice and an opportunity to address the issue.

[106] I therefore do not treat the Defendant's unpleaded prescription argument as a defence to the claim in these proceedings. I nevertheless consider the substantive question briefly because the parties addressed it fully in their submissions and because it bears upon the legal character of the Claimant's claim.

[107] The Defendant relies on **Article 2121(4) of the Civil Code**¹² and submits that the claim is prescribed after six years. The Claimant contends that his claim is one in proprietary estoppel and is not a commercial claim within that provision.

[108] In **National Contractors Limited v Boriel**¹³, the Court of Appeal made clear that the fact that the relief sought is equitable does not, of itself, place a claim outside the prescription provisions of the Civil Code. Where the underlying right or cause of action is prescribed, an equitable remedy cannot be used to avoid that prescription. The Court further held that

⁹ [1966] 2 All ER 349 - "In article 2129 quoted above, both the right and the remedy are extinguished, and therefore there is no question of a party being called upon to choose whether he would plead the defence of limitation. As long as the evidence in a case discloses that the period of limitation has expired, the judge has no discretion in the matter."

¹⁰ In all the cases mentioned in articles 2111, 2121, 2122, 2123 and 2124, the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired except in the case of promissory notes and bills of exchange, where prescription is precluded by a writing signed by the person liable upon them.

¹¹ SLUHV/CAP2017/0025 (delivered 18th September 2020) at [35] – [37]

¹² Cap 4.1 of the Revised Laws of Saint Lucia – which provides that "The following actions are prescribed by 6 years: (4) Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of merchandise, whether negotiable or not, or upon any claim of a commercial nature, reckoning from maturity; bank notes, however, being excepted from this prescription.

¹³ SLUHC/VAP2021/0010 (unreported) delivered on 24 March 2023 per Michel JA para 57

Article 2103¹⁴ operates as a residual provision prescribing after thirty years all things, rights and actions not otherwise specifically regulated.

[109] I therefore reject the Claimant's submission insofar as it suggests that proprietary estoppel is incapable of prescription merely because it is equitable. The question remains, however, whether the six-year prescription under Article 2121(4) applies to this claim. That provision concerns claims of a commercial nature. In **Boriel**, the Court found the claim commercial because it concerned the purchase of shares in a trading company and was also a sale of movables within Article 2121(5). The present case concerns an alleged transaction between individuals for immovable land. The proceedings were properly brought in the Civil Division of the High Court. The nature of the claim does not bring it within the category of commercial claims contemplated by Rules 71.1(2) and (3) of the Civil Procedure Rules (Revised Edition) 2023. Equally, the Defendant has not established that such a transaction falls within Article 2121(4) of the Civil Code, nor has any authority been cited to that effect.

[110] In those circumstances, the residual period under Article 2103 is applicable. The alleged transaction occurred in 1997 and these proceedings were commenced in 2023, before the expiration of thirty years. The claim is therefore not prescribed.

[111] There is also one more point to consider on this issue, none of the documents in support of the agreement or the oral representations has a date for completion. It follows therefore that before time would start to run for the purpose of prescription would be from the date of the breach. There can only be breach of an open contract for sale of land after time has been made of the essence. To start time running for completion, either party would have to serve, a notice calling upon the other to close the sale. Only from the date of refusal, after time has been made of the essence, would time start to run, see **Mungalsingh v Juman**¹⁵.

¹⁴ All things, rights, and actions, the prescription of which is not otherwise regulated by law, are prescribed by 30 years, without the party prescribing being bound to produce any title, and notwithstanding any exception pleading bad faith.

¹⁵ [2015] UKPC 38 – para 13.

[112] Turning now Laches. Laches is an equitable doctrine. The question is not simply how much time passed, but whether the delay, viewed in all the circumstances, makes it inequitable to grant relief. In this case, the Claimant continued to assert his interest, remained in possession on the findings I have made, instructed lawyers, registered cautions and later sought to pursue the estate. The Claimant's submissions make the point that, far from remaining wholly inactive, he repeatedly asserted the same interest over the years.

[113] There is also some force in the Claimant's response that the conduct of the Deceased must be considered. If, as I have found, the Claimant remained in possession asserting an interest in the land, the Deceased did not obtain a possession order against him. The equities arising from delay therefore do not operate only in one direction.

[114] I would also distinguish between the effect of delay on the existence of the claim and its effect on the evidence and remedy. The passage of time has made the Court cautious about accepting the Claimant's recollection of the precise square footage allegedly promised. That is one reason why the Court has not accepted his case for 10,000 square feet. In that sense, the delay has had a real evidential consequence. It does not, however, persuade the Court that the entire equitable claim should be extinguished.

[115] I therefore conclude that the Defendant has not established that the claim is barred by prescription or laches. The delay is relevant to the Court's assessment of the evidence and to the form of relief, but it does not defeat the proprietary estoppel which has otherwise been established.

The nature of the Claimant's interest and the appropriate relief

[116] The final question is the form of relief. The Claimant relies on **Guest v Guest**¹⁶ and submits that the Court should fashion relief sufficient to satisfy the equity. His primary claim is for 10,000 square feet, with the surveyed parcel of approximately 5,343 square feet as an alternative.

¹⁶ [2022] UKSC 27

[117] The Claimant has not established, on a balance of probabilities, that the assurance made by the Deceased was for 10,000 square feet. I therefore reject the Claimant's primary claim to that extent.

[118] I have nevertheless found that the Claimant paid \$20,000.00 in connection with the transaction, that he entered into possession of the area, that he cultivated and improved it, and that the Deceased subsequently commissioned a survey identifying an area of 5,343 square feet in the same general location. The surveyed parcel also corresponds broadly with the dimensions appearing in the receipts and is an identifiable parcel. I have also found that the Claimant continued to assert an interest in that land over many years. Those features make it the clearest objective representation of the interest which the evidence supports.

[119] In those circumstances, I am satisfied that the equity arising in favour of the Claimant is most appropriately satisfied by recognising his equitable interest in the parcel identified by the 2006 survey plan, identified as Block 0821B Parcel No. 169.

[120] The remedy is not based upon a finding that the Claimant proved a contractual entitlement to that precise square footage. It is an equitable remedy fashioned to satisfy the equity arising from the Deceased's assurance, the Claimant's payment, reliance and detriment.

[121] The Claimant also submits that the estate takes the property subject to any equity which arose during the Deceased's lifetime.

[122] I therefore order that the Defendant, as personal representative of the Estate, shall take all reasonably necessary steps to execute all instruments necessary to transfer the resulting registered parcel to the Claimant. The Claimant shall bear the reasonable costs of the preparation, stamping and registration of the transfer, subject to any order or requirement of the relevant statutory authority.

COSTS:

[123] This is a claim for an unspecified sum. The applicable costs regime is prescribed costs.

There is no reason to depart from the general rule that costs follow the event. The Claimant has been successful on this claim and accordingly should have his costs. These costs are calculated on the claim having a value of \$50,000.00 and quantified in the sum of \$10,000.00.

ORDERS:

[124] For the reasons above, I make the following orders:

- 1) Judgment is entered for the Claimant against the Defendant on this claim.
- 2) A declaration is granted that the Claimant has an equitable interest in the surveyed parcel of approximately 5,343 square feet registered in the Land Registry as Block 0821B Parcel No. 169 in the name of Laurretta Joseph née Canchon (the subject land), arising from proprietary estoppel.
- 3) A declaration is granted that the Estate of Laurretta Joseph née Canchon holds the subject land subject to the Claimant's equitable interest.
- 4) An order is granted directing the Defendant, as personal representative of the Estate, to transfer the subject land to the Claimant, together with execution of any documents reasonably necessary to give effect to the transfer within twenty-eight days of this judgment.
- 5) The Claimant shall be responsible for the preparation, stamping and registration of the deed of transfer /or necessary documents in his favour.
- 6) In default of execution by the Defendant within the time specified above, the Registrar of the High Court is directed to execute all necessary documents on behalf of the Defendant pursuant to Section 18 of the Eastern Caribbean Supreme Court (Saint Lucia) Act.

- 7) The Defendant shall pay the Claimant's prescribed costs of this claim quantified in the sum of \$10,000.00.

**Alvin Shiva Pariagsingh
High Court Judge**

By the Court,

Deputy Registrar of the High Court