

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law and Equity Division**

**2010/CLE/gen/00798**

**BETWEEN**

**LILLIAN MCPHEE**  
**(As Administrator of the Estate of Thelma Mackey)**

**Plaintiff**

**AND**

**WARREN STUART**

**Defendant**

**Before:** The Honourable Madam Justice Indra H. Charles

**Appearances:** Mrs. Onan Lamour-Williams of Chancellors Chambers for the Plaintiff  
Mr. Darren Bain of Craig F. Butler & Co. for the Defendant

**Hearing Dates:** 20, 21, 28 October, 11, 25 November, 16 December 2016

**Land Law – Tenant or Possessory Owner – Tenancy at Sufferance or Will - Adverse Possession - Proprietary Estoppel –Expenditure on house**

The Plaintiff, as the administratrix of the estate of the late Thelma Mackey, instituted this action against the Defendant alleging that the Defendant was a tenant of her late husband. She seeks among other things, an order for vacant possession of the house and arrears of rent since September 2008. The Defendant asserts that he was not a tenant of Mr. McPhee or anyone. He claims possessory title to the house under the Limitation Act Ch. 83. He also claims that he has made substantial repairs to the house and as such, proprietary estoppel arises.

**HELD:**

[1] The Defendant was a tenant of the late Beecher McPhee and the tenancy continued by the late Lucy Knowles after Mr. McPhee died.

[2] The Defendant is now a tenant at sufferance: *Dawes v Bayles* [1989] BHS J. No. 84 applied.

- [3] In light of the factual finding by the court, the issue of possessory title does not arise for consideration.
- [4] The law is clear as to when a defendant can raise proprietary estoppel: *Ramsden v Dyson and Thornton* (1886) LR 1 HL 129, 12 Jur NS 506, 14 WR 926 applied. *Inwards V Baker* [1965] 1 All ER 446 distinguished.
- [5] The Defendant has no valid claim of estoppel against the Plaintiff because he was a tenant and under the implied terms of the tenancy agreement, he is required to do the wear and tear associated with his tenancy.
- [6] The Plaintiff has rightful ownership over the house holding one-half share with her son and the other one-half share is to be devised to Rudolph Butler.
- [7] The Plaintiff is entitled to an order for vacant possession, arrears of rent and the other consequential orders which she sought.

## JUDGMENT

**Charles J:**

### Introduction

- [1] The key issue in this action is whether the Defendant was a tenant or not of the late Beecher McPhee (“Mr. McPhee”) of a house situated at No. 33 Minnie Street, in the Englerston Subdivision, New Providence (“the house”).
- [2] The Plaintiff, as the administratrix of the estate of the late Thelma Mackey, (“Mrs. Mackey”) instituted this action against the Defendant seeking an order, principally, for vacant possession of the house and arrears of rent. The Plaintiff alleges that the Defendant was a tenant of Mr. McPhee and, despite numerous demands, he has not paid rent since September 2008.
- [3] Contrarily, the Defendant asserts that he was not a tenant of Mr. McPhee or anyone. He claims possessory title to the house under the Limitation Act Ch. 83.
- [4] For reasons which will become more evident in the judgment, I find as a fact that the Defendant was a tenant of Mr. McPhee and the tenancy continued after Mr. McPhee died. The Defendant is therefore a tenant at sufferance. The Plaintiff is

entitled to an order for vacant possession, arrears of rent and the other consequential reliefs sought.

### **Procedural history**

- [5] By a Generally Indorsed Writ of Summons filed on 18 June 2010, the Plaintiff sought an order for (i) vacant possession; (ii) arrears of rent from September 2008 in the sum of \$9,900 and continuing; (iii) payment of all outstanding utilities; interest and costs.
- [6] The Defendant filed a Notice of Appearance on 29 June 2010.
- [7] On 9 August 2010, the Plaintiff filed a Judgment in Default of Defence. On or about 12 November 2010, the Plaintiff filed a Summons pursuant to Order 14 Rule 1 and/or Order 19 Rules 5 and 6 of the Rules of the Supreme Court (“the RSC”) for Judgment in Default of Defence to be granted for failure to enter a Defence within the time mandated by law.
- [8] The matter was heard by Adderley J (as he then was) on 20 May 2011. In the interim and on 17 May 2011, the Defendant filed a Summons seeking to set aside the Judgment in Default of Defence and for leave to file a Defence.
- [9] In a written judgment delivered on 29 July 2011, Adderley J ruled in the Plaintiff’s favour finding at paragraph 6 of the judgment that “*there is no good and arguable case on the part of the defendant.*” He went on to dismiss the Summons of the Defendant and granted Summary Judgment, possession and the other reliefs prayed in the Writ filed on 18 June 2010 with costs to be taxed if not agreed.
- [10] The Defendant, being dissatisfied with the judgment, appealed to the Court of Appeal. On 22 November 2012, the Court of Appeal allowed the appeal, set aside the Judgment in Default and Summary Judgment and remitted the matter to the Supreme Court for determination. Leave was also granted to the Defendant to defend the action and for him to file his Defence within 14 days.

[11] On 6 December 2012, the Defendant filed a Defence and Counterclaim.

### **Background facts**

[12] The Plaintiff is the Administratrix of the Estate of Mrs. Mackey who died on 3 August 1993. The house was conveyed to Mrs. Mackey by way of an Indenture dated 4 July 1960 from Englerston Limited.

[13] Prior to her death, Mrs. Mackey created a trust over the house by virtue of her Last Will and Testament dated 18 May 1992 wherein she appointed Mr. McPhee, the Executor and Trustee of her Will. Clause 2 of the Will reads as follows:

**“I DEVISE my lands and hereditaments situate in the “Englerston” Subdivision and being lot number Thirty-three (33) in block number Forty-three (43) thereof and having such boundaries and dimensions more fully set forth in an Indenture of Conveyance dated the fourth day of July 1960 and made between Englerston Limited of the one part and Thelma Clarice Mackey of the other part and recorded in the Registry of Records in the City of Nassau in Volume 312 at pages 422 to 426 to my Trustee in fee simple upon trust to settle call in and convert the said lands and hereditaments into money with power to postpone such sale calling in and conversion so long as my Trustee shall think proper without being liable to account and my Trustee shall stand possessed of the net proceeds of sale and shall distribute the same as follows, that is to say: - one-half to Lucy Knowles of Acklins Street in the Southern District of the Island of New Providence and one-half to my said Trustee.” [Emphasis added]**

[14] Mr. McPhee was the nephew of Mrs. Mackey. By virtue of her Last Will and Testament, Mr. McPhee and Lucy Knowles (“Ms. Knowles”), the younger sister of Mrs. Mackey, also now deceased, each had an equitable interest in the house as they were the only two beneficiaries named in the Will. Mr. McPhee was the sole “trustee in fee simple” of the house. He took charge of the house.

[15] It is the Plaintiff’s case that Mr. McPhee rented the house to the Defendant from 1993 and collected the rents which were shared equally between him and Ms. Knowles. Mr. McPhee died on 12 May 1998. After he died, the nephew of Ms. Knowles, Rudolph Butler, collected the rent from the Defendant. Ms. Knowles

died testate on 15 September 2008. In her Last Will and Testament dated 5 July 2005, she devised the house to Rudolph Butler.

- [16] The Plaintiff, the wife of Mr. McPhee was granted Letters of Administration in his Estate by the Supreme Court on 21 April 2009. The Plaintiff, as the Administrator of the Estate of Mr. McPhee, named in the Will of Mrs. Mackey, was also granted Letters of Administration in the Estate of Thelma Mackey on 27 October 2009.
- [17] The Plaintiff made several demands for rent from the Defendant subsequent to the death of Ms. Knowles but she was unsuccessful. Such demands were made on 30 November 2008 and 4 November 2009: See Tab 13, 14 & 24 of the Plaintiff's Bundle of Pleadings and Documents.
- [18] The Plaintiff applied to the Magistrate Court on two occasions each time seeking eviction and arrears of rent. The Defendant had his then Counsel advised the Plaintiff that an action has been initiated before the Supreme Court and on the second occasion the Plaintiff learned for the first time that the Defendant was claiming ownership of the house.
- [19] It is not disputed that the Defendant and his family currently occupy the house. The Defendant alleges that in or about 1993, a Lucy Knowles ("Ms. Knowles") gave him and his family permission to occupy the house rent free. He says that he has made significant renovations to the house and at all times, he and his family enjoyed uninterrupted, undisturbed and peaceable enjoyment of the house for 23 years. He seeks a declaration that he be declared the legal and beneficial owner of the house.

### **The issues**

- [20] The parties did not file a Statement of Agreed Facts and Issues. However, each party identified his/her issues which do not differ substantially. In my opinion, the following issues arise for consideration namely:

- (i) Whether the Defendant was a tenant of Mr. McPhee?

- (ii) If he was not, is he entitled to the house by way of possessory title?
- (iii) Whether the Defendant is a tenant of sufferance? If so, whether the Plaintiff is entitled to any mesne profits due to trespass by the Defendant?
- (iv) Whether the Defendant has entitlement to recover loss in damages against the Plaintiff on a claim of estoppel due to repairs done to the home by the defendant?

### **The evidence**

[21] The Plaintiff gave evidence and called two witnesses to testify on her behalf. The Defendant gave evidence and called one witness to support his testimony.

[22] The Plaintiff testified that she is the Administratrix of the estate of the late Mrs. Mackey. Mrs. Mackey was the owner of the house at 33 Minnie Street. Mrs. Mackey executed her Last Will and Testament on 18 May 1992 appointing her husband, the late Mr. McPhee as trustee of her Will. In Clause 2 of her Will, she left the house to her husband as sole trustee in fee simple to sell the house and to share the net proceeds equally with Ms. Knowles, also deceased.

[23] The Plaintiff further testified that she is aware that her late husband eventually rented out the house to the Defendant who continues to occupy it to date along with a woman who had on occasions identified herself to him as the Defendant's wife. The Plaintiff testified that she is also aware that her late husband collected rent from the Defendant, the proceeds of which were shared with the late Ms. Knowles up to and until her death. She stated that her husband suffered a stroke sometime in 1996 or 1997 and he was unable to move around as freely as he once did so their son Roland McPhee usually accompanied her husband to collect the rent until his demise on 12 May 1998. After her husband's death, Ms. Knowles took on the responsibility of collecting the rents. She is aware that Rudolph Butler, the nephew of Ms. Knowles, assisted her in collecting the rents. Ms. Knowles died on or about 15 September 2008.

- [24] The Plaintiff asserted that she made contact with the Defendant during the first week of November 2008 and she questioned him about the rents that were due and owing for September and October 2008. She said that he will contact her son Roland which did not happen.
- [25] She telephoned the Defendant during the second week of November 2008 and reminded him of the outstanding rents. She wanted to sell the house. She spoke with the Defendant about this. Her son made arrangements with the Defendant for Mr. Donald H. Smith, an appraiser to gain access to appraise the house. That was done on 22 October 2008. She said that she was made aware that the Defendant himself made an offer to purchase the house on the condition that he is credited for all rental payments which he had previously made. The Plaintiff said that offer was not feasible so it was turned down.
- [26] Attempts to collect outstanding rents proved futile so the Plaintiff sought legal assistance. She next sought the assistance of police officers at Wulff Road Police Station to assist her in delivering a letter from her attorney with a copy of her Grant of Administration.
- [27] The Plaintiff later filed an application in the Magistrate Court on two occasions seeking an Order of Eviction and arrears of rent. The Defendant appeared with an attorney who stated that the matter is before the Supreme Court and the Magistrate dismissed the matter for that reason.
- [28] Several months passed and after not hearing from the Defendant, she instituted the present action.
- [29] Under cross-examination, the Plaintiff stated that her husband told her that the rent was \$450.00 monthly. He did not say who the gentleman was that he was renting the property to. She was unable to say on which day the rent was due. She personally never collected the rent. After her husband passed away, she was aware that Ms. Knowles and Rudolph Butler collected the rents.

- [30] The Plaintiff was extensively cross-examined. Throughout her testimony, she remained calm, collected and composed. She impressed me as a witness of truth.
- [31] The next witness, Roland McPhee ("Roland") was called on behalf of the Plaintiff. He is the son of the late Mr. McPhee and the Plaintiff. He testified that prior to his father's death, he took full responsibility for caring for his needs including being his driver and acting on his behalf and also collected rents from the Defendant on his father's behalf. Certain paragraphs of his witness statement, particularly paragraphs 7, 8, 12 and 21 were inconsistent with his oral testimony. Nevertheless, having observed his demeanour, I did not conclude that he was not telling the truth. I was convinced that the passage of time was responsible for the inconsistencies in his evidence. He was clear that he caused an appraisal to be done in or about October 2008 on account of his mother's intention to sell the house. He asserted that in an effort to carry out the appraisal, he arranged with the Defendant to allow the appraiser to gain entry into the house. He was emphatic that for the appraiser to state that the house had three bedrooms and to be so precise, the appraiser would have had to enter the house. He stated that if the Defendant believed that he was truly entitled to the house, he would not have any reason to permit an appraiser to enter on instructions from another party.
- [32] Under cross-examination, the witness emphasized that he is aware that the Defendant was a tenant as he accompanied his father to collect the rent from the Defendant. Under re-examination, Roland was not aware of the rental agreement. He stated that after his father died, Rudolph Butler collected the rent and that after Ms. Knowles died, he himself attempted without success to collect rents from the Defendant.
- [33] The third witness to be called by the Plaintiff was Rudolph Butler. Initially, he could not be located but as the trial got underway, he showed up with a bundle of what appeared to be rent receipts. Learned Counsel for the Plaintiff, Mrs.



Williams quickly moved the court for further/ fresh evidence to be adduced in accordance with the principles laid down by Denning LJ in the seminal case of **Ladd v Marshall** [1954] 3 All E.R. 745 at page 748. On 28 October 2016 and with the consent of learned Counsel for the Defendant, Mr. Bain, Mr. Butler was permitted to testify.

[34] Mr. Butler stated that the late Mrs. Mackey was his grandaunt. That she was married to Benjamin Mackey who predeceased his grandaunt. After the death of Benjamin Mackey, his uncle, Mr. McPhee took over the care of Mrs. Mackey. He asserted that his grandaunt left the house to Mr. McPhee and Ms. Knowles but Mr. McPhee was known to be in charge of the house. He is aware that Mr. McPhee rented the house to Debbie Stuart. Then the next door neighbour, known to him as Warren Rolle moved into the house from his mother's house which was next door. He now found out that Warren Rolle is Warren Stuart, the Defendant. Mr. Butler stated that he cannot confirm his name but he is familiar with him. He stated that when his uncle, Mr. McPhee became ill, on occasions, he would collect rent from the tenants in the house and the rents were shared between Mr. McPhee and Ms. Knowles. He stated that when he collected the rent, he dealt mostly with Debbie Stuart. Mr. Butler testified that when Mr. McPhee died, he continued to collect the rent from Debbie Stuart and he will give the entire proceeds of the rent to Ms. Knowles. He testified that rental payments were four hundred and fifty dollars (“\$450”). Mr. Butler exhibited twenty-three receipts to confirm that on diverse dates, a rent of \$450 was paid by one Debbie Stuart or D. Stuart for a house on Minnie Street. One such receipt shows that on 4 July 2008, the amount of \$450 was paid by D. Stuart as rent for June 2008.

[35] Under cross-examination, Mr. Butler asserted that he had never seen a rental agreement but maintained that he gave receipts for rent to Debbie Stuart. He also stated that the Defendant was a tenant.

[36] I found Mr. Butler to be a candid and unflinching witness and I accepted his evidence as credible.

- [37] The Defendant gave evidence and called Mr. Sidney Fernander, a neighbour to testify on his behalf.
- [38] The Defendant testified that he and his wife Deborah Stuart and family reside in the house and they have occupied it for the past 23 years. He further testified that in or about 1993, he and his family took occupation of the house and they never paid rent to anyone or entered into any agreement with anyone to pay rent. He stated that he and his family made substantial investments to the house by way of maintenance, repair and upkeep. They replaced the roof and painted the house. They have always maintained the yard, either by themselves and/or hiring a handyman to do so. The Defendant insisted that since their occupation in 1993, they have never paid rents to anyone and his family lived in the house for 23 years without interruption or interference from anyone. He stated that at no time did the Plaintiff or the Estate of Thelma Mackey or the Estate of Beecher McPhee seek to prevent or stop their occupation of the house or the renovation and upkeep.
- [39] The Defendant asserted that prior to this action and the letter of Messrs. Smith & Smith (to which he had no knowledge), he never knew the Plaintiff nor received any demand from her for rents or her asking us to leave the house.
- [40] The Defendant seeks a declaration that he be declared the legal and beneficial owner of the house.
- [41] Mr. Sidney Fernander testified on behalf of the Defendant. He stated that he has been living on Minnie Street since about 1950. He asserted that he is aware that the Defendant and his family have lived exclusively at the house for the past 20 years and that the Defendant always maintained the yard. He has not seen any other person care for or attend to the house where the Defendant and his family live. He corrected paragraph 11 of his witness statement and said that that he does not know for a fact that the Defendant owns the house.

[42] Under cross-examination, Mr. Fernander said that he does not know how the Defendant came in possession of the house.

[43] Having had the opportunity of seeing and hearing the witnesses, on a balance of probabilities I prefer the evidence of the Plaintiff and her witnesses to that of the Defendant. I found Mr. Fernander who appeared for the Defendant to be a credible witness but as he stated, he does not know anything about the ownership of the house. As I dissect his evidence, all that he could say is that the Defendant has been living in the house for about 20 years and he maintains the house and keeps the yard clean and tidy.

[44] With regards to the Defendant, I found him to be an unimpressive and inherently unreliable witness. One would have thought that after Mr. Butler testified and produced twenty-three original receipts of payments of rents by a Debbie and/or D. Stuart, the Defendant would have brought this case to an end but he carried on in spite of overwhelming documentary evidence.

**Was the Defendant a tenant of Mr. McPhee?**

[45] In identifying the critical evidence in this case, it is crystal clear that the Defendant was a tenant of Mr. McPhee and later Ms. Knowles. Although the receipts were in the name of D. Stuart/Debbie Stuart, on a balance of probabilities, the court accepted the evidence of the Plaintiff and her witnesses, primarily Mr. Butler that the Defendant and/or his wife were tenants of Mr. McPhee and then Ms. Knowles. Shortly after the death of Ms. Knowles in September 2008, the Plaintiff approached the Defendant seeking payment of rent but he failed and/or refused to do so.

**Is the Defendant entitled to house by way of possessory title?**

[46] Given my finding that the Defendant was a tenant of Mr. McPhee which tenancy continued during the lifetime of Ms. Knowles, this issue does not arise for discussion. The law on possessory title is relatively uncomplicated and for

purposes of this judgment, the court does not wish to embark on an academic excursion.

**Is the Defendant a tenant at sufferance?**

[47] As the learned authors in **Hill and Redman's Law of Landlord and Tenant (11<sup>th</sup> edition)** at page 18 put it:

**“A tenancy at sufferance arises where a person who has held by a lawful title continues the possession after the title has determined without either the agreement or disagreement of the person then entitled to the property. This is so whatever the nature of the tenant's former estate, whether he was tenant for years, or the undertenant of a tenant for years, or a tenant at will. The tenancy arises by implication of law and cannot be created by contract between the parties.”**

[48] Tenants at sufferance are not, on a balance of authority, entitled to a notice to quit: see **Dawes v Bayles** [1989] BHS J. No. 84, **Gonsalves-Sabola J** (as he then was), at paragraph 12.

[49] It is clear that a tenancy at will ought not be confused with a tenancy at sufferance due to the distinctions:

- a. The tenancy at will is held by consent of the landlord;
- b. No contractual relationship arises between the landlord and the tenant at sufferance;
- c. Tenant at sufferance cannot be sued for arrears of rent (because he does not have the landlord consent to remain on the premises) only he can be sued for mesne profit (remedy against a trespasser).

[50] Given my finding that the Defendant was a tenant of Mr. McPhee which tenancy continued, then the Defendant is, for all intent and purposes, a tenant at sufferance, who is in possession of the house without permission of the landlord with no written agreement or lease in place. The Defendant himself averred that he never paid rent which of course, is not true. It appeared that the last payment of rent was in June 2008, as shown by the original receipt which was produced

by Mr. Butler. Consequently, the Plaintiff is entitled to mesne profits as claimed in her Statement of Claim from September 2008 to present date.

**Whether the Defendant has entitlement to recover loss in damages against the Plaintiff on a claim of estoppel due to repairs done to the home by the defendant?**

[51] In his counterclaim, the Defendant prayed for the following orders namely:

- a) A Declaration that he is the legal and beneficial owner;
- b) A Declaration by reason of estoppel that the Plaintiff cannot seek ownership or possession of the House and that the Defendant is the owner;
- c) A Declaration that the Plaintiff's claim is displaced by the Limitation Act;
- d) Cost,
- e) Such further or other relief as the court deems just.

[52] The Defendant asserted that he made substantial contributions to the house as is evidenced in his witness statement and exhibits: see receipts exhibited to the Defendants documents [at Blue Tab of Trial Bundle]. He further submitted that the Plaintiff in her assertion of ownership of the house, knew or ought to have known that the Defendant was spending monies and time on the upkeep of the house on the premise that he was and is the lawful owner; and she did nothing to stop his investment, or correct what she perhaps consider to be his mistaken belief.

[53] Learned Counsel Mr. Bain submitted that on the principle of equity, the Plaintiff is now estopped. He cited the well-known case of **Inwards v. Baker** [1965] 1 All ER 446. At page 448, Lord Denning MR said:

**“It is quite plain from those authorities that, if the owner of land requests another, or indeed allows another, to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to entitle him to stay. He has a licence coupled with an equity.”**

[54] Put another way, in **Greasley v. Cooke** [1980] 3 All 710, Dunn LJ at page 7 paragraph 8 stated:

**“There is no doubt that for proprietary estoppel to arise the person claiming must have incurred expenditure or otherwise have prejudiced himself or acted to his detriment.”**

[55] The Plaintiff submitted that the most of the exhibits is quotations and are dated since the commencement of the initial action between the parties with a few dated in 1998 and not earlier. Of note, says the Plaintiff, is that they are not addressed to the Defendant and the addresses vary. In particular:-

- i. The renovations to the house by Green Construction in the amount of \$21,000.00 dollars was dated 17 November 2009;
- ii. The Paint Depot receipt in the amount of \$3, 513.11 was dated 17 November 2009;
- iii. Rudy’s Cabinet & Millwork in the amount of \$6, 500.00 (no date attached);
- iv. Tops Lumber & Building dated 18 September 2009 in the amount of \$1,204.20;
- v. Electrical repairs dated 18 November 2009 in the amount of \$6,500;
- vi. Hanna’s Plumbing in the name of one, Sean Daxon, dated 25 November 2009 in the amount of \$1,951.05;
- vii. In addition to other miscellaneous claims ranging from 1998, 1999, 2004, and 2006 (exhibits smaller amounts in dollar figure).

[56] Learned Counsel Mrs. Williams trenchantly argued that the Defendant has no valid claim of estoppel against the Plaintiff because he was a tenant and required, under the implied terms to keep the premises in good repair, which a reasonably- minded tenant would do having admitted to not paying any rents to justify reasons for a landlord to repair the wear and tear occasioned by the Defendant’s occupation, bearing in mind the locality, character and age of the premises at the time of the lease. See: **Proudfoot v Hart** (1890) 25 Q.B.D. 42.

This, according to the Plaintiff, justifies the minor repairs the Defendant alleges he underwent in (vii) above, if any at all, which are denied by the Plaintiff in any event.

[57] Mrs. Williams next submitted that as for the counterclaim contending estoppel by the Plaintiff, the law is pellucid as to when a defendant can raise the issue of estoppel. The starting point can be gleaned from the case of **Ramsden v Dyson and Thornton** (1866) LR 1 HL 129, 12 Jur NS 506, 14 WR 926. Lord Cranworth puts it succinctly:

**"If a stranger begins to build on land supposing it to be his own, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to persevere in his error, a court of equity will not allow afterwards the real owner to assert his title to the land. But if a stranger builds on land knowing it to be the property of another, equity will not prevent the real owner from afterwards claiming the land, with the benefit of all the expenditure upon it."** [Emphasis added]

[58] In the present case, I find that the Defendant could not have supposed the house to be his own because he entered as a tenant paying rents and to this day he is still in occupation of the same and is regarded as a tenant, albeit, a tenant at sufferance, since he has refused to pay rent. I accept the Plaintiff's evidence that she is/was unaware of any renovations to the house as alleged by the Defendant save that the same may have commenced after this action and/or her formal demands for rent payments. In fact, she did not expect such a thing to occur merely because she has filed an action against the Defendant to have him removed from the property for his failure to pay rent. Hence, he was well aware of the action because he was properly served and represented by counsel on all occasions. Therefore, he acted to his own detriment if he made substantial repairs to the house without the knowledge of the Plaintiff. The law is clear that if a tenant builds on his landlord's land, he does not, in the absence of special circumstances, acquire any right to prevent the landlord from taking possession of the land and buildings thereon when the tenancy has determined. No special circumstances were identified in this case.

[59] Further, if the Plaintiff had allowed the Defendant to remain in the house and cause repairs with the Plaintiff's knowledge and to the belief of the Defendant that he would remain on the premises for his life time then, it could be said that the Plaintiff should be estopped from claiming ownership of the house. This was the principle adumbrated in **Inwards v Baker** [supra]. The brief facts were that a father had encouraged his son to build a bungalow on his land. The son had done so in the expectation, encouraged by the father, that he, would be permitted to remain in occupation. The Court of Appeal held that the son had an equity entitling him to live in the bungalow as long as he wished. The logic of the case is that when the father had died, the trustees of his will, were estopped from denying that the son's licence to occupy the land was an irrevocable one. This is not so in the present case.

[60] At page 449, Lord Denning MR stated:

**"...even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do..."**

[61] I agree with learned Counsel Mrs. Williams that **Inwards v Baker** is distinguishable as the Plaintiff did not encourage the Defendant to do the repairs which he alleged that he did.

[62] From the evidence, the Defendant averred that he was let into this premises to reside there rent-free by a Lucy Knowles. It is significant because the documentary evidence demonstrates that as of June 2008, he had paid rent to Ms. Knowles for the house. The Defendant is no doubt, a stranger to the truth.

[63] In any event, in his counterclaim, the Defendant makes no claim of equitable or proprietary estoppel. These were made in submissions by learned Counsel Mr. Bain. I have to say that submissions are just that. They do not rise to the level of



pleadings and evidence. Notably, in his Counterclaim, the Defendant seeks a declaration that he is the legal and beneficial owner of the house.

### **Additional issue raised by the Defendant**

[64] In his written submissions, learned Counsel Mr. Bain raised the issue of whether Ms. Knowles, as a beneficiary under the Will of Mrs. Mackey, could grant a licence to the Defendant.

[65] Given my factual finding that the Defendant was a tenant of Mr. McPhee and the tenancy continued during the lifetime of Ms. Knowles, it would be circuitous if I even attempt to address the issue. The simple point is that Ms. Knowles did not allow the Defendant to occupy the house rent-free.

### **Plaintiff has rightful ownership over the house**

[66] The Plaintiff is entitled to her claim as the Administratrix of the Estate of her late husband, Mr. McPhee (and Mrs. Mackey). Mr. McPhee died intestate leaving the Plaintiff and a son, Roland. His estate was administered on 21 April 1999 giving the Plaintiff and Roland rightful ownership over his one-half share of the house.

[67] The remaining one-half of Mrs. Mackey's estate went to Ms. Knowles. Ms. Knowles died and left a Will in which she specifically stated that:

**“I GIVE AND DEVISE all of my lot of land together with the dwelling house situate on Lot No. 33 on Minnie Street in the Eastern District of the said Island of New Providence unto and to use of my nephew, the said Rudolph Butler absolutely in fee simple.”**

[68] It follows that the Plaintiff and her son would share 50/50 split of half of the ownership of the house and the other half is to be devised to Rudolph Butler.

### **Conclusion**

[69] In conclusion, I find that the Defendant was a tenant of Mr. McPhee and later, Ms. Knowles. He has not paid any rent from September 2008 and therefore, he is a tenant at sufferance.

[70] The Plaintiff is entitled to the relief claimed in her Statement of Claim. The Order of the Court is as follows:

- (1) The Defendant vacates the house situate at No 33 Minnie Street in the Englerston Subdivision, New Providence by 31 December 2017;
- (2) The Defendant pays all arrears of rent from September 2008 to 31 December 2017;
- (3) The Defendant pays the costs associated with the application in the Magistrate Court on two separate occasions;
- (4) The Defendant pays the outstanding funds due and owing to the Bahamas Water and Sewerage Corporation in the sum of \$419.08.
- (5) The Defendant pays the outstanding funds due and owing to the Bahamas Electricity Corporation in the sum of \$1,146.40.
- (6) Interest pursuant to the Civil Procedure (Awards of Interest) Act 1992 and
- (7) Costs.

[71] In accordance with the Order of the Court, the Plaintiff submitted her Bill of Costs on 16 December 2016. To date, the Defendant has not done so. I will give the Defendant to review the Plaintiff's Bill of Costs which will be heard on 28 November 2017 at 2.30 p.m.

[72] Last but not least, I am grateful to both parties for their patience as they patiently await the protracted delivery of this judgment.

**Dated this 31<sup>st</sup> day of October, A.D. 2017**

**Indra H. Charles**  
**Justice**