

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2018/CLE/gen/01198

IN THE MATTER OF the Estate of Gwendolyn Richardson, Deceased

B E T W E E N:

ELLEN MUNNINGS

CALLWIN MUNNINGS

Plaintiffs

AND

DIANA MILLER

1st Defendant

AND

SIDWELL MUNNINGS

2nd Defendant

Before: **The Honourable Mr. Justice Neil Brathwaite**

Appearances: Attorney Travette Pyfrom for the Plaintiffs
 Attorney Roshar Brown for the First Defendant

DECISION

BRATHWAITE, J

INTRODUCTION

- [1.] This is an action arising out of a verbal agreement made between the First Defendant and the Plaintiffs in or around 2008 to permit the Plaintiffs to occupy the family home situate at 119 Collins Avenue, Nassau, New Providence, The Bahamas (the ‘**Home**’) rent free for an undefined period of time.
- [2.] In or about 2018, the First Defendant commenced eviction proceedings against the Plaintiffs in the Magistrate’s Court to prevent the Plaintiffs by themselves or by their agents or servants from occupying the Home.
- [3.] In defence of what they perceived to be their rights, the Plaintiffs commenced this action by way of a specially endorsed Writ of Summons filed 12th October 2018. The Writ was amended and re-amended, with the re-amended Writ being filed on 28th March 2019. The Plaintiffs seek the following relief:
- “1. A declaration that the Plaintiffs have a beneficial interest in the whole property.**
- 2. Alternatively a declaration that the Plaintiffs have a right to peacefully occupy the property for the rest of their life.**
- 3. An injunction restraining the Defendants their agents servants or otherwise from interfering in any manner whatsoever with the Plaintiff’s use and enjoyment of the property.**
- 4. An order that the 2nd Defendant do within 7 days replace the kitchen and the shutters destroyed by him.**
- 5. Alternatively damages and interest on those damages under the Civil Procedure Award of Interest Act.**
- 6. Costs.”**
- [4.] The First Defendant filed a Defence and Counterclaim on 15th April 2019. By her defence, the First Defendant denies the allegations in the re-amended writ and by her Counterclaim, the First Defendant seeks the following relief:

- “1. Damages/mesne profits.**
- 2. A declaration that the Plaintiffs and their servants or agents are not entitled to enter 1st Defendant’s said House.**
- 3. An injunction to restrain the Plaintiffs whether by themselves or by their servants agents or otherwise howsoever from entering, crossing or occupying the 1st Defendant’s said House and land.**
- 4. Interest pursuant to the Civil Procedure (Award of Interest) Act 1992.**
- 5. Costs.**
- 6. Any further relief as the Court deems fit and just.”**

[5.] In response to the Defence and Counterclaim, a Reply and Defence to the Counterclaim was filed by the Plaintiffs on 16th September 2019. By the Defence to the Counterclaim the Plaintiffs plead the defence of estoppel.

FACTUAL SUMMARY

- [6.] The parties to this action are siblings and the children of the late Gwendolyn Richardson (**‘GR’**) who was bequeathed the home the subject of this action by her common law husband John Munnings (**‘JM’**). JM died on 4th January 1999 and was the father of the parties to this action.
- [7.] In or about 2003 the First Plaintiff was resident in the United States but became desirous of returning to The Bahamas to live and reside in the home which was unoccupied at the material time.
- [8.] The First Plaintiff sought the verbal permission of her mother, GR, to occupy the Home. Permission was granted subject to the agreement of Natasha Munnings (**‘NM’**), (granddaughter of GR and niece of the First Plaintiff), which the First Plaintiff avers to have verbally obtained.
- [9.] Shortly after obtaining the mentioned permissions, in or about 2003 the First Plaintiff returned to The Bahamas and moved into the said home where she has lived ever since. Save for the First Plaintiff contributing to the utility bills of the Home and allegedly painting her personal room, at no material time has the First Plaintiff paid rent to live in the home or made

any significant contribution or any contribution at all towards the maintenance of the home's exterior, the yard or the home's overall improvement.

- [10.] Several years later on 18th May 2008, GR died and by her Last Will and Testament dated 17th January 2000 she left the home to NM (now deceased) along with the Defendants as Joint Tenants with rights of survivorship.
- [11.] From 1999 to 2008 the home was the subject of litigation between the Executors of the estate of JM who wanted to claim the home, and the First Defendant on behalf of her mother, GR. Once GR died, the First Defendant continued the proceedings until 2015 in her capacity as Executrix of GR's estate.
- [12.] In or about 2008, the First Defendant gave the Plaintiffs permission to remain in the home without the expectation of paying rent. However, the Second Defendant objected to this arrangement.
- [13.] On 13th June 2016, the First Defendant became the legal owner of the home by Conveyance By Way of Assent executed by the Executors of the estate of JM pursuant to the directives of the Court set out in the Judgment of The Hon. Justice Stephen G. Isaacs (2009/CLE/gen/01601) dated 29th August 2013.
- [14.] Due to the litigious matters involving GR's estate between 1999 and 2015 the First Defendant claimed that both the First Defendant and the estate of GR have accrued substantial debt that remains owing. To extinguish the debt, the First Defendant seeks vacant possession of the home so it can be sold, as it is the only real property of GR's estate.
- [15.] Requests were made by The First and Second Defendant for the Plaintiffs to vacate the home which ultimately proved unsuccessful. Therefore, proceedings were commenced in the Magistrates Court for their eviction which the Plaintiffs have sought to challenge with this instant action.

THE PLAINTIFF'S CASE

- [16.] The First Plaintiff filed a witness statement on 24th May 2023. A witness statement by Dahralyn Munnings was also filed in support of the Plaintiff's case on the same date. No evidence was filed by or on behalf of the Second Plaintiff.
- [17.] The witness statement of the First Plaintiff provides that in 2005 prior to moving into the home, the First Plaintiff sought and obtained verbal permission to do so from her mother,

GR, who was the legal owner of the home at the time. However, during cross-examination the First Plaintiff recalled the material time of her move to be in or around 2003 instead.

- [18.] The First Plaintiff's witness statement further provides that the said permission of GR was made subject to the agreement of NM. During cross-examination, the First Plaintiff explained that this was because GR allegedly gave NM authority over the home at the time of her intended move.
- [19.] In furtherance of the First Plaintiff's claim that GR granted her permission to reside in the home, the First Plaintiff in her witness statement asserted that while GR was alive she allowed the First Plaintiff to treat the home as if it were hers and never gave her a reason to think that she would eventually need to find a place of her own. The First Plaintiff reiterated this position during re-examination where it was her evidence that before GR died (being several years after she moved in) GR did not say to her that she had to move out of the home or seek to find alternative accommodation at any point.
- [20.] As regards the subsequent agreement of NM, the First Plaintiff states in her witness statement that when she sought the agreement of NM, NM told her '*without hesitation*' that she had no issues with her moving into the home as it was at that time unoccupied. The First Plaintiff further elucidated on this during her re-examination where she articulated that it was NM and '*not really*' GR who granted her the permission on which she relied as her assurance to move into the home as NM was the one who told her '*girl, go ahead [...] you could live there until you die.*'
- [21.] Thereafter, following the death of GR in 2008, it is the First Plaintiff's position as set out in her witness statement that she was granted further permission by the First Defendant to continue to occupy the home. The materialization of this confirmation was produced to the Court in the Agreed Bundle of Documents in the form of a letter by the First Defendant's Attorney (at the time) dated 18th January 2018. The letter was addressed to Jackie Maria Munnings (another sibling) who also moved into the Home circa 2018 and *inter alia* included a statement that it was agreed by the Defendants that the First and Second Plaintiffs were allowed to '*reside in the dwelling house on the subject property free of charge.*'
- [22.] The Plaintiff's now contend as set out in the Plaintiff's Opening Submissions that the First Defendant's permission granted in her capacity as Executrix of the estate of GR amounted to a confirmation of the First Plaintiff's position that she was granted permission by GR through NM to live in the home until she dies.
- [23.] Therefore, it is the First Plaintiff's position that in reliance on the initial permission from GR which she contends was a perpetual promise that was never withdrawn she never invested

in a home of her own and now she cannot afford to do so being a woman of advanced age who is handicapped and of minimal income.

- [24.] For those reasons, the First Plaintiff contends that it would be unconscionable at this point for the First Defendant to repudiate the so called promise and evict her from the home.

THE DEFENDANT'S CASE

- [25.] The First Defendant Filed a Witness Statement on 9th June, 2023 and thereafter filed a Supplementary Witness Statement on 19th June, 2023.
- [26.] By way of the First Defendant's witness statement, it is the First Defendants evidence that at all material times she was a co-beneficiary of the home along with the Second Defendant pursuant to her mother's Will.
- [27.] It is undisputed that sometime in 2008 the First Defendant gave the Plaintiffs permission to occupy the home without the expectation of the Plaintiffs having to pay rent. This permission was granted by the First Defendant in her capacity as Executrix of the estate of GR.
- [28.] The First Defendant then became the legal owner of the home in 2016 by way of a Conveyance By Way of Assent, a copy of which has been produced to this Court. It is the First Defendant's position as set out in her witness statement that the First Plaintiff always knew and accepted her ownership rights in the home, having even stated to the First Defendant by way of a voice message that *'Mummy and Daddy dead long time....okay. The House belong to you. You give me and Colwin the rights to stay inside here.'*
- [29.] However, with circumstances having changed since 2008 and considering the Plaintiffs refusal to contribute to any of the home's expenses and upkeep, the First Defendant testified during cross-examination that since 2016 when the Conveyance By Way of Assent was filed she decided that *'it would be best to sell it [the home] and pay off the expenses of the Estate.'* In order to facilitate this sale, the First Defendant asserts that the Plaintiffs were asked to vacate the home from 2018 which, as evidenced by this instant action, they have refused to do.
- [30.] Further, despite the permission granted to the Plaintiffs in 2008, the First Defendant posited that the Second Defendant was not always in agreement with the Plaintiffs occupying the home rent free. This is corroborated in the witness statement of the First Plaintiff which confirms that the Second Defendant had a letter delivered to the First Plaintiff in December

2017 requesting her to commence paying a weekly rental payment of \$50.00 while she remained resident in the home. This letter was referenced in the Notice to Vacate the Property dated 14th June 2018 produced to this Court in the Agreed Bundle of Documents which states that *'beginning 1st January 2018, there would be a cost of \$7.15 per day or \$50.00 per person per week for any and every person that remained'* and *'failing their ability to adhere would result in their immediate eviction after 30 days.'*

- [31.] As regards the weekly rental payment, it is undisputed that no payment of any kind was ever made to the Defendants by the First Plaintiff or anyone who stayed in the home save for the Second Plaintiff who according to the aforementioned Notice to Vacate *'has hesitantly given by way of repairs less than half of his commitment and likewise has Jackie Munnings.'* Following the First Plaintiff's move into the home, according to the witness statement of Dahralyn Munnings, daughter of the First Plaintiff, sometime in or around 2008, she moved into the Home as well along with her two sons and her boyfriend Romeo who stayed in the Home for some material period prior to and leading up to these proceedings. However, up to the instant date of the Notice to Vacate, while Romeo moved out of the Home, neither Ellen nor Dahralyn who remained rendered *'one single penny of their commitment'* as averred by the Second Defendant in the said Notice.
- [32.] Additionally, along with never paying rent, the First Defendant asserted in her witness statement that the Plaintiffs never contributed towards any of the legal fees which the First Defendant claims have been accrued by the First Defendant and the estate of GR as a result of the litigation from 1999 to 2015 which was necessary to save the Home.
- [33.] The evidence of the legal fees accrued was produced to the Court in the Agreed Bundle of Documents in the form of the outstanding Bill of Costs owed to Cassar & Co. in the sum of \$84,995.97. By way of the First Defendant's witness statement, the First Defendant avers that her financial resources are now exhausted and she had to utilize her personal assets as security for the total fees alleged. It is therefore the First Defendant's position as asserted in her supplementary witness statement that the reason the Plaintiffs are able to reside in the home is solely because of her efforts over the last twenty four (24) years.
- [34.] By remaining in the home and refusing to pay any rent since being told to leave by the Defendants in 2018, the First Defendant in her witness statement claims that the Plaintiffs have caused both the estate of GR and the First Defendant to accumulate more debt.
- [35.] Further, by way of her supplementary witness statement the First Defendant claims that the Plaintiffs have deprived the Defendants of their inheritance by neglecting the Home and therefore causing its market value to decline. The First Defendant has submitted photos to

the Court by way of her supplementary witness statement which clearly show the home and the yard in a state of apparent disrepair.

[36.] It is therefore the First Defendants position that while the Plaintiffs have suffered no discomfort or loss during this application their continual and deliberate wrongful occupation of the home has caused the First Defendant to suffer the loss and damage particularized in the First Defendant's Counterclaim and set out below.

Particulars of loss and damage

- i. The 1st Defendant has been unable to collect rental income from the House as a result of the Plaintiff's occupation;
- ii. The 1st Defendant has been unable to sell the House as a result of the Plaintiffs occupation; and
- iii. The 1st Defendant has been deprived of the use of her House and property.

[37.] For these reasons, the First Defendant has asked this Court to award damages/mesne profits and order that the Plaintiffs vacate the home so that the Defendants can have access to their inheritance in fulfilment of the wishes of GR, and so that the home can be sold to extinguish the debts of GR's estate.

ISSUES

[38.] The issues therefore that arise for determination by this Court are:

- i. Whether the Plaintiffs can rely on the Doctrine of Proprietary Estoppel;
- ii. Whether the Plaintiffs should be evicted; and
- iii. Whether the First Defendant should be awarded mesne profits;

LAW

Proprietary Estoppel

[39.] In **Halbury's Law of England Estoppel (Volume 47 (2021) Fifth Edition at page 397**, as regards the doctrine of Proprietary Estoppel, it is provided that:

"Where the representation is a promise that the promisee will inherit property, proprietary estoppel may be used to give effect to the promise notwithstanding that the statutory formalities for making a testamentary disposition have not been complied with."

[40.] In *Thorner v Major and others* 12 ITELR 62 [2009] UKHL 18 at para 29 it is stated by Lord Walker of Gestingthorpe in regards to the doctrine of Proprietary Estoppel that:

“[...] Most scholars agree that the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance.”

Lord Walker goes on to state beginning at para 56 that:

“[56] I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context. I respectfully concur in the way Hoffmann LJ put it in *Walton v Walton* (in which the mother’s ‘stock phrase’ to her son, who had worked for low wages on her farm since he left school at fifteen, was “You can’t have more money and a farm one day).” Hoffmann LJ stated (at para 16): “The promise must be unambiguous and must appear to have been intended to be taken seriously. Taken in its context, it must have been a promise which one might reasonably expect to be relied upon by the person to whom it was made.”

[57] Hoffmann LJ enlarged on this (at paras 19–21): ‘But in many cases of promises made in a family or social context, there is no intention to create an immediately binding contract. There are several reasons why the law is reluctant to assume that there was. One which is relevant in this case is that such promises are often subject to unspoken and ill-defined qualifications. Take for example the promise in this case. When it was first made, Mrs Walton did not know what the future might hold. Anything might happen which could make it quite inappropriate for the farm to go to the plaintiff. But a contract, subject to the narrow doctrine of frustration, must be performed come what may. This is why Mr Jackson, who appeared for the plaintiff, has always accepted that Mrs Walton’s promise could not have been intended to become a contract. But none of this reasoning applies to equitable estoppel, because it does not look forward into the future and guess what might happen. It looks backwards from the moment when the promise falls due to be performed and asks whether, in the circumstances which have actually happened, it would be unconscionable for the promise not to be kept.’ [Emphasis added]

[41.] In *Rawlings v Chapman & Ors* [2015] EWHC 3160 (Ch) at para 4 HHJ Davis Cooke summarized the law on proprietary estoppel as follows:

“i) A proprietary estoppel arises where

a) The owner of land induces encourages or allows the claimant to believe that she has or will enjoy some right over the owner’s property;

- b) In reliance on this belief, the claimant acts to her detriment to the knowledge of the owner;
 - c) The owner then seeks to take unconscionable advantage of the claim by denying her the right or benefit which she expected to receive.
- ii) Whilst it is convenient to examine these three elements as separate components, in fact they often interrelate and “the court must look at the matter in the round” (Gillett v Holt).
- iii) There need be no promise of a specific right or identification of specific land, provided the promise is “clear enough” in the circumstances (Thorner v Major).
- iv) The belief of the claimant that she would obtain an interest in the property regardless of whether or not the owner meant to encourage that belief may found an equity but only where such belief was reasonable in the circumstances (Thorner v Major).
- v) The court has a discretion as to how any equity found should be satisfied, and does not necessarily do so by satisfying the terms of any promise found to have been made. The essence of the jurisdiction is to avoid an unconscionable result, and the court may conclude that it would not be unconscionable to renege on a promise if some lesser form of relief (such as monetary compensation for any detriment suffered) is given to the claimant. There was of course substantial disagreement as to whether that was appropriate in this case.
- vi) In considering what detriment the claimant has suffered, the court must take into account any countervailing benefits that she has received, such as residing in the owner’s property rent free.
- vii) The claimant need not have acted in sole reliance on the promises made, as long as they formed a substantial element of her motivation. If it is shown that the claimant has in fact acted to her detriment and was encouraged to do so by the owner, the court will readily infer that she did so in reliance on his promise. However, if it is shown that the claimant would have acted as she did in any event, no equity will arise.”

[42.] In *Winter v Winter and Clarke Willmott Trust Corporation Ltd* [2024] EWCA Civ 699, the Court of Appeal reviewed the authorities on detriment and provided at the paragraphs indicated below that the following principles should be noted:

- “[26] detriment is an essential element of proprietary estoppel.
 - [32] detriment must be pleaded and proved.
 - [27-28] detriment is not a narrow or technical concept and need not consist of the expenditure of money or other quantifiable detriment. Examples cited include: Positioning one’s whole life on the basis of assurances given.
- Greater burdens in terms of working hours and more difficult working relationships.

An ever increasing burden of care for an elderly person and of having to be subservient to their moods and wishes.

[29-30] where the claimant's reliance has resulted in disadvantages and benefits, the courts must have regard to both.

[45 & 52] where a claimant has devoted their life to a particular course in reliance on an assurance, it may be proper to find detriment, even if the claimant has not shown that they would otherwise have been likely to take a specific alternative course which would probably have been more beneficial.

[31] detrimental reliance is an evaluative judgment and there are limited circumstances in which an appellate court will interfere with a finding of detriment."

Mesne Profits

[43.] In Callendar And Callendar v Dottin (1965) 8 WIR 429 the British Caribbean Court of Appeal said the following:

"Indeed, Jenkins LJ, in his judgment in making use of the judgments of Somervell and Denning LJ, in *Facchini v Bryson* ([1952] 1 TLR 1386, 96 Sol Jo 395, CA, Digest Cont Vol A 1073, 7602a) quoted a passage from the judgment of Denning LJ, in which Denning LJ, said ([1952] 1 TLR at p 1389):

"We have had many cases lately where an occupier has been held to be a licensee and not a tenant. In addition to those which I mentioned in *Errington v Errington and Woods* ([1952] 1 All ER 149, [1952] 1 KB 290, [1952] 1 TLR 231, 96 Sol Jo 119, CA, Digest Cont Vol A 992 1684a), we have recently had three more, *Gorham (Contractors), Ltd v Field* (unreported), *Forman v Rudd* (unreported), and *Cobb v Lane* ([1952] 1 All ER 1199, [1952] 1 TLR 1037, 96 Sol Jo 295, CA, Digest Cont Vol A 996, 1914a). In all cases where the occupier has been held to be a licensee there has been something in the circumstances, such as a family arrangement, an act of friendship or generosity, or such like, to negative any intention to create a tenancy. In such circumstances it would be obviously unjust to saddle the owner with a tenancy, with all the momentous consequences that that entails nowadays, when there was no intention to create a tenancy at all...."

ANALYSIS

[44.] In considering this matter, I will deal firstly with the Plaintiff's defence of Estoppel.

[45.] The case of **Thorner v Major** (supra) sets out the three elements the First Plaintiff in this action must satisfy in order for Proprietary Estoppel to be established, namely (i) that there was a representation or assurance made to the First Plaintiff; (ii) that there was a reliance by the First Plaintiff on the representation or assurance; and (iii) that there was detriment to the First Plaintiff in consequence of her reasonable reliance.

[46.] In determining whether these elements are satisfied, the Court must look at the matter in the round (*Rawlings v Chapman & Ors [2015] EWHC 3160 (Ch)*) and where the Plaintiff's reliance has resulted in disadvantages and benefits, the Court must have regard to both (*Winter v Winter and Clarke Willmott Trust Corporation Ltd*).

Representation or Assurance made to the Plaintiffs

Assurance by GR and NM

[47.] In the First Plaintiff's witness statement she claims that in 2005 GR gave her permission to move into the unoccupied family home subject to the agreement of the First Plaintiff's niece, NM. It was the First Plaintiff's understanding that the permission of GR and the agreement of NM amounted to assurances that she could reside in the Home for the rest of her life.

[48.] The First Plaintiff claims to have sought and obtained both of these assurances verbally prior to her moving into the home which she recalled during her cross-examination to be sometime in or around 2003 and not 2005. However, as both GR and NM are now deceased the veracity of these assurances can only be tested against what the First Plaintiff has posited.

[49.] In that regard, this Court first turns to the First Plaintiffs *viva voce* evidence where she admitted that as regards her mother's permission for her to move into the home she herself could not truly be sure of the term that permission was intended to extend for due to the fact that she did not get to speak to her mother before she died, and therefore she did not truly know if her mother's permission extended to her continuing to reside in the home once her mother passed.

[50.] It was also her evidence during re-examination that it was not really her mother but rather her niece who gave her the permission on which she claims to have relied to mean that she could reside in the Home until she dies.

[51.] In **Guest and another v Guest**, [2022] UKSC 27 at para 107, the Supreme Court

emphasized that only the legal owner has the authority to make binding decisions regarding property disposition and any consent to dispose of property must be given by the legal owner and comply with formal requirements, such as being in a contract, deed, or will.

[52.] In **Southern Pacific Mortgages Ltd v Scott (Mortgage Business Plc intervening)**, [2014] UKSC 52 the court held that a promise cannot bind the property before the promisor becomes the legal owner.

[53.] However, in **Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd** [1964 EWCA Civ J0124-3, it is provided by Diplock LJ that if the person making the promise or assurance had actual authority (express or implied) from the legal owner, the legal owner will be bound by the promise. It is also provided that if the person lacked actual authority, the legal owner may still be bound if they held out the person as having authority (apparent authority), and the promisee reasonably relied on this.

[54.] In this case, the Claimant has alleged that at the time the assurance was made by NM, NM had been given authority over the home by GR. However, the only evidence of this authority being granted is the assertion by the First Plaintiff that this is what was communicated to her by GR. With no other corroborative proof of the said authority, it is my view that the First Plaintiff's assertion in this regard is nothing more than just that.

[55.] Further, the law of proprietary estoppel requires that the representation be clear. Given that the First Plaintiff herself stated that she could not truly be sure of the term the permission was intended to extend, the Court is not satisfied on the balance of probabilities that there was ever any promise that the Defendants could reside in the home for life.

Assurance by the First Defendant

[56.] Following GR's passing, in or around 2008, it is undisputed that the First Defendant granted permission to the Plaintiffs to remain resident in the Home with no expectation of them paying rent as evidenced in the January 2018 letter by the First Defendant's Attorney. However, on review of the Letter, it is not stipulated what term this permission was extended for.

[57.] According to the First Plaintiff in the Plaintiff's Opening Submissions, the permission of the First Defendant was understood by her to be granted for "an indefinite period of time" or "as long as she [the First Plaintiff] wished". This understanding is clearly in dispute as evidenced by the existence of this instant action.

[58.] Considering the above, it is therefore my view that in the context of this case the assurance from the First Defendant relied on by the Plaintiffs is not clear enough as to the term the Plaintiffs were intended to be permitted to remain in the home. Therefore, it is not corroborative as regards the Plaintiffs claim that they were promised by the First Defendant that they could remain in the home rent free for the rest of their lives, a promise which I again am not satisfied was made.

[59.] For those reasons, while I do accept that an assurance was given to the Plaintiffs by the First Defendant I do not accept that it was an assurance that the Plaintiffs could remain in the home for the rest of their lives.

Reliance by the Plaintiffs

[60.] As regards reliance, it is the First Plaintiff's position that she returned to Nassau and moved into the family home due to her reliance on the assurance made to her first by GR and subsequently by NM.

[61.] The First Plaintiff further contends that she has remained in the home and never sought to invest in a home of her own due to her reliance on her understanding of the assurance given to her by the First Defendant.

[62.] In **Thorner v Major** (supra) it is provided that reliance as an element of Proprietary Estoppel must be reasonable. As regards the First Plaintiffs reliance on the assurance of NM, I find that prior to moving into the home the First Plaintiff always intended to relocate to Nassau. Therefore, I do not accept that she based her relocation on any assurance at all. But, in any event, as I have already found that the assurance provided by NM was ineffective, I will move to consider whether or not it was reasonable for the First Plaintiff to rely on the alleged permission granted to her by GR to reside in the home to mean she could remain in the home perpetually.

[63.] In considering this determination, I first look to the fact that GR died testate and by her Will set out exactly what she intended to happen with the home. It is clearly stipulated therein that the home was to belong to NM and the Defendants. In fact, this is undisputed.

[64.] I then consider that at the time the assurance was granted by the First Defendant to the Plaintiffs, the First Defendant was both the Executrix of the Estate and co-beneficiary of the home.

[65.] On that basis, I do not find it to be a reasonable reliance by the Plaintiffs that the initial permission granted to them in 2008 by the First Defendant to occupy the home would mean they could live in the home forever. It is my finding that while the Plaintiffs were allowed to remain in the home prior to the First Defendant receiving legal ownership in 2016, the First Defendants permission was granted out of compassion for her siblings who had no other viable accommodations at the time. However, once GR died, legally the home belonged to the Defendants and the Plaintiffs had to expect that a viable reality could be that the Defendants would at some point claim their inheritance, particularly as there had been extensive litigation undertaken to secure that inheritance.

Detriment to the Plaintiffs

[66.] As regards detriment, it is the First Plaintiff's position that having relied on the assurance of the First Defendant, she has never invested in a home for herself and due to spending her meager income on bills she is now unable to afford alternative accommodations in the current housing market.

[67.] According to **Winter v Clarke Willmott Trust Corporation Ltd.** (supra), in determining what detriment the Plaintiffs have suffered, the Court must take into account the countervailing benefits they have received. In this case, the Plaintiffs have been able to reside in the home rent free for an extensive period of time at the expense of the First Defendant, GR's estate and the inheritance rightfully due to the Defendants, and indeed also had other relatives residing there. The Plaintiffs have also had the benefit of receiving income from charging parking fees to patrons attending a medical clinic near to the home. Yet the Plaintiffs have refused to make any material contribution (if any at all) to the maintenance and upkeep of the home or the legal fees concerning the home which have been solely borne by the First Defendant and GR's estate. Further, the Court is not persuaded that the detriment alleged to have been suffered by the First Plaintiff was incurred solely or substantially as a result of her reasonable reliance on any assurances made.

[68.] Therefore, the Court finds that no equity arises in the Plaintiffs favor and the Defendants are entitled to possession of the property as the Plaintiffs have not established that the elements of Proprietary Estoppel have been made out to the requisite standard of proof or at all.

Mesne Profits

[69.] I now turn to the matter of mesne profits. It is clear to me that in the instant case a family arrangement was involved, creating a license for the Plaintiff's to remain in occupation of the home. In my view that license came to an end when steps were taken to have the Plaintiffs evicted. In the appeal case of **Callendar And Callendar v Dottin (1965) 8 WIR 429** (supra), the court of first instance awarded mesne profits from the date notice was given to the occupier to quit. Similar considerations apply in this case. I am therefore of the view that once the licence was brought to an end by the instigation of eviction proceedings, the Plaintiffs became trespassers, entitling the Defendants to mesne profits from that date. The evidence is also that a demand for rent in the amount of \$50.00 per week had been made, which in my view is not an unreasonable sum for the rental of an entire home. I therefore find that the award of mesne profits is justly warranted.

CONCLUSION

[70.] Having heard the witnesses and considered their evidence, this Court finds that in seeking vacant possession of the home, the Defendants took no unconscionable advantage of the Plaintiff's reliance on the initial license. Rather, this Court finds that it would be unconscionable for the Plaintiffs to remain resident in the home rightfully belonging to the Defendants. It is readily apparent that the Plaintiffs have no intention of paying rent, contributing to the upkeep of the home or ensuring it is maintained in a reasonably decent manner, as a result of which the market value of the home is steadily declining, placing the inheritance of the Defendants in jeopardy. Further, there are substantial debts owed by the estate of GR which can be extinguished by the sale of the home.

[71.] Ultimately, to allow the Plaintiffs to remain in the home would result in the unjust outcome of the Defendants being unconscionably deprived of the inheritance to which they were entitled as a result of the bequest of their mother, GR.

[72.] Therefore, in these circumstances, the claim of the Plaintiffs fails and the Court makes the following Orders:

- (1) The Plaintiffs are to vacate the house situate at 119 Collins Avenue, New Providence by the expiration of ninety [90] days from the date of this Order.

- (2) Damages/mesne profits are awarded to the Defendants in the amount of \$50.00 per week from 14 June 2018 which is the date of the Notice to Vacate, to the date of judgment.
- (3) The Plaintiffs whether by themselves or by their servants agents or otherwise howsoever shall not enter, cross or occupy the First Defendant's said House and land effective ninety [90] days from the date of this Order.
- (4) Interest pursuant to the Civil Procedure (Award of Interest) Act 1992.
- (5) The Claimants shall pay the Defendants costs, to be taxed if not agreed.

Dated this 18th day of June, A.D. 2025



Neil Brathwaite

Justice

