IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 391 OF 2003
Legal Aid Civ 0004/2012

BETWEEN	**MARLENE SAMUELS**	**FIRST PLAINTIFF**
AND	**CHRISTALINE MCLAUGHLIN**	**SECOND PLAINTIFF**
AND	**MICHAEL MCLAUGHLIN**	**DEFENDANT**

GRAND COURT - CAYMAN ISLANDS

IN CHAMBERS AS OPEN COURT
BEFORE THE HON. ANTHONY SMELLIE, CHIEF JUSTICE
ON THE 29TH TO 20TH APRIL AND 23RD DECEMBER 2014

APPEARANCES: Ms. Sheridan Brooks of Brooks and Brooks, Attorneys-at-Law for the First Plaintiff
The Second Plaintiff (nominally joined at the instance of the First Plaintiff)
Mr. James Kennedy of Samson and McGrath for the Defendant

Rival claims of siblings to beneficial interest in family home – whether claims in equity of one sufficient to override legal title of the other.

JUDGMENT

1. This matter involves a dispute between siblings regarding the legal and beneficial interests in their family home located at East End, Grand Cayman: Registration Section East End Block 72B Parcel 113 ("the property").

2. The house on the property was built by their father, Mr. Lloyd McLaughlin after his retirement as a seaman in the 1970s, using funds he had received by way of compensation for injuries sustained while working for National Bulk Carriers.

3. Lloyd McLaughlin and his wife Christaline McLaughlin (the 2nd Plaintiff) had 10 children who survived them, the 1st Plaintiff Marlene and the Defendant Michael, being respectively their 9th and 10th child.

4. The children were all raised at the family home until they moved out as young adults to pursue their own livelihoods and careers[1]. Marlene was the exception, as she remained living at the family home even after she became married, in order to care for Lloyd and Christaline in their declining years.

5. Lloyd McLaughlin predeceased Christaline in 1999, leaving registered title to the family home in her name alone.

6. On 27th July 1999, she transferred title into the joint names of herself and Marlene, on the basis of "*natural love and affection*", thus allowing for the abatement of the stamp duty otherwise payable upon the transfer. While questions about her mental capacity at a later stage arise for consideration, there is no dispute that when she executed that transfer, Christaline McLaughlin was of full mental capacity.

7. It is significant that this is acknowledged by Michael who asserts, for the purposes of his case as explained below, that his mother remained fully in command of her faculties up to and beyond the occasions when she purportedly executed two

[1] I will often refer in this judgment to the parties and their witnesses by their first names, purely as a matter of convenience and without intending discourtesy or disrespect.

documents respectively in the years 2000 and 2003. It is his case that she executed a document described as a "notice of *severance of joint proprietorship*" of the property on 13th September 2000 ("the Severance Notice") and, on the 7th September 2003; swore an affidavit of her wishes and intentions that her half interest in the property not devolve to Marlene but be transferred to him. He alleges that his mother executed these documents because of his undertaking to her, to which Marlene was also privy and which he claims to have fulfilled, that he would make extensive renovations to the house.

8. While this allegation of his is denied by Marlene and by those siblings who testified on her behalf, it is an allegation that frames the legal nature of Michael's counterclaim in this action. He has been in occupation of the house since July 1999 when he became newly married and was granted permission by Marlene to reside there, as she says, in one room only and for a short while until he got a place of his own. After some time and as he was then unemployed and had nowhere else to live, he was allowed to remain. In return, the agreement between them says Marlene, was that he would make certain repairs to the property, the materials for which would be bought with funds from their mother's account, as the upkeep of the property was for her benefit. There never was any suggestion that Michael would acquire an interest in the property, says Marlene.

9. He has however in fact remained in occupation ever since and in exclusive occupation with his family, since their mother's death in 2009. This has been despite

Marlene's written and oral demands for recovery of possession and hence her claim for that relief, in this action.

10. Michael's counter-claim is presented by Mr. Kennedy as one based primarily upon a proprietary estoppel. It is to the effect that he acted upon the representations of his mother and Marlene, that in return for his renovating the house, he would become entitled to one-half of the property and that as he has acted to his detriment in making those renovations and ongoing repairs to the house ever since he went into occupation in July 1999, Marlene should be estopped from denying his beneficial entitlement.

11. The legal and factual burden to be discharged by Michael is a heavy one in light of the clear legal title registered in Marlene's name. Moreover, not only was their mother indisputably of full mental capacity when she added Marlene as joint proprietor in July 1999, the further undisputed evidence of their elder brothers George and Alvin McLaughlin - evidence which is supported by the documentary record - is that their mother had explained to them her wish that Marlene should inherit the property and had attended upon a well-known and well respected Justice of the Peace - Mr. Percival "Will" Jackson - for the execution of the deed of transfer to Marlene and that Mr. Jackson had then given their mother appropriate advice about the implications of the transfer. George's evidence in this regard, is that Mr. Jackson advised their mother that the transfer to her daughter Marlene would mean that upon her demise, Marlene would be sole proprietor to the exclusion of all her other

children. According to George, Christaline nonetheless then insisted that that was what she intended and wished to do.

12. These intentions and wishes of their mother were only natural, fit and proper, said George. This he explained, was because Marlene was the person who had been most responsible and committed to caring and providing for both their father and mother during their old ages. Christaline McLaughlin had lived a full and long life to age 93, indisputably said George, because of the care and comforts that Marlene had provided for her.

13. In this account of events, George's evidence was fully supported by that of his brother Alvin McLaughlin. I note here that both of these gentlemen impressed me as forthright and truthful witnesses.

14. In support of Marlene's testimony, Alvin and George also testified about the arrangements they had together put in place, with other siblings, for their mother's care. They had agreed at a family meeting that each would contribute a fixed sum each month to pay for a live-in helper for their mother and for meeting all her other needs. The agreement was also that Marlene would assume primary responsibility to ensure that all arrangements were in place and that she would meet any shortfalls in funding, which she often did.

15. Neither the Defendant Michael nor their brother and his chief supporting witness Marquiss McLaughlin, attended that meeting or contributed in any way to those expenses.

16. Michael, they said, took no interest whatsoever in the welfare of their parents. He had moved away from the home and from East End some 23 years before they died and seldom during all that time, even bothered to visit with them. Since he was allowed back into occupation of the property and while their mother was alive, he constantly harassed and threatened her to bring about her renouncement of her transfer of title to Marlene. This, says Marlene, had been a cause of real unhappiness and distress to their mother during her final years. And this, says Marlene, is her real reason, as a matter of principle, for not wishing to recognise the claim which he asserts for a one-half interest in the property which was their parents' home. So far as she is concerned, he did nothing to deserve it and it was her parents' and her mother's wish in particular, that she, not him, should inherit the property and this is what the legal title shows.

17. With the allegations and counter-allegations framed in those terms, I will now turn to look at the evidence in detail. The examination of the documentation begins with the putative Severance Notice bearing a signature of Christaline McLaughlin on 13th September 2000 and the affidavit purportedly sworn by her on 7th September 2003 (the "2003 affidavit") and filed in these proceedings.

18. The 2003 affidavit was, on its face, executed some six months after Christaline McLaughlin had been diagnosed as suffering from "severe dementia" by Dr. H. Hughes of the Cayman Islands Health Services Authority, George Town Hospital. Dr. Hughes' clear manuscript note to that effect and dated 20th March 2003, was

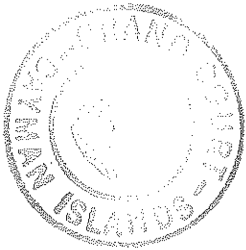
tendered in evidence and his diagnosis remains unchallenged by any other medical evidence.

19. Nonetheless, the 2003 affidavit purportedly has Christaline McLaughlin declaring to the following effect (inter alia):

> "*In July 1999, my son* [Michael] *told me that he was getting married and asked me if he could come and live with me on the 12th July 1999. The house needed repair and I told him that he could do the repairs and that I would leave the property for him and Marlene and he started to repair it.*
>
> *On the 30th July, 1999, I signed a transfer of the property to myself and Marlene and intended it to be Tenants in Common as I intended to give my half to my son Mike upon my decease. However, by mistake it was done as joint tenants.*
>
> *On the 13th September, 2000 the mistake in the transfer was brought to my attention and so I sent a letter to the Director of Lands and Survey Department to have the transfer changed to tenants in common but my daughter refused to sign the document to sever joint tenancy despite my wish.*"

20. The first and obvious thing to note about this affidavit is, of course, that the facility of recall of events that it evinces is entirely inconsistent with Christaline McLaughlin's state of severe dementia diagnosed some six months earlier. Her reliance on the

notion of "mistake" also suggests an appreciation of the difference between "tenant in common" and "joint tenancy" as an equitable basis for renouncing the 30th July 1999 transfer; all of which would be, to say the least, surprisingly inconsistent not only with a state of dementia but also with the level of understanding of the intricacies of conveyancing law to be expected of a lay person. As will be further explained below, the 2003 affidavit was not drafted by a lawyer acting upon instruction from Christaline. It was admittedly drafted by Mr. Marquiss McLaughlin acting, according to him, upon Christaline's instructions. Although Marquiss testified that he had been advised on the legal requirements for severance of joint tenancy by the Registrar of Lands, the 2003 affidavit nonetheless purports to be an expression of Christaline's own understanding, wishes and intentions. On its face the 2003 affidavit is therefore a document to be approached with great caution as a basis for upsetting her voluntary transfer of title by way of joint tenancy to herself and Marlene on the 30th July 1999, some four years earlier, when she was of indisputably sound mind.



21. Moreover, the views expressed in the 2003 affidavit are also inconsistent with a "N*otice Determining Tenancy at Will*" which Christaline signed jointly with Marlene and issued to Michael on 3rd December 2002, requiring him to "*quit and deliver up possession of the Property within 5 days*".

22. Christaline's clear and firm signature on this document (as on others in the case) appears in stark contrast to the very feeble, almost illegible signature, which appears

on the 2003 affidavit. The same is true of the comparison with her signature appearing on the Severance Notice.

23. The Severance Notice must be considered along with the 2003 affidavit not only for that reason but also because they both speak to the alleged change of heart on the part of Christaline.

24. Like the contents of the 2003 affidavit, the author of the Severance Notice was Marquiss McLaughlin and so, it is upon his evidence, that the search light must now be focused.

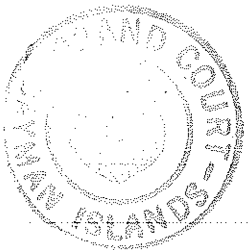
25. As to the contents of the 2003 affidavit, Marquiss at first testified in court, that he had attended upon attorney-at-law Neville Levy and given him instructions based on instructions from his mother Christaline, for the drafting of this affidavit. However, later in cross-examination, he admitted to having drafted the 2003 affidavit himself, according to him - based upon instructions from his mother and to having then taken her before a Justice of the Peace (a Mrs. Darryl Rankine), for execution of the affidavit. He said that he then read the contents over to his mother in the presence of Mrs. Rankine and his mother, confirming that she understood the contents, swore to and signed it in the presence of Mrs. Rankine.

26. He said he then had no concerns about his mother's state of mind, instead rhetorically challenging Dr. Hughes' earlier diagnosis of March 2003, by responding to cross-examination thus: "*what method did the doctor use to prove that my mother was suffering from dementia?*" – and insisting that his mother had been entitled to change

her mind from her earlier decision in 1999 to execute the transfer to his sister Marlene. Given those attendant circumstances, I am obliged to note the absence of any independent evidence from Mrs. Rankine JP, verifying the execution of the 2003 affidavit.

27. As to the contents of the Severance Notice, Marquiss also admitted to its authorship and moreover, to having been the person who attested to his mother's execution of it. He offered no acceptable reason why he did not then also take his mother before a Justice of the Peace ("JP") for its execution; rather, merely explaining that when the time came for the execution of this document, his mother had become "suspicious" of all other JPs and had expressed the wish for him to witness the formalities. As he is himself a JP and Notary Public, he saw nothing inappropriate about complying with her wish.

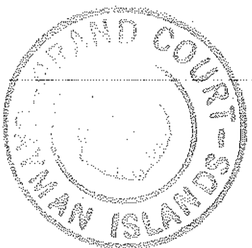
28. Christaline McLaughlin's feeble, almost illegible signature on this document, although purportedly dated 13th September 2000, seems near identical to that written three years later on the 2003 affidavit, and so also stands in stark contrast to her other firm and clear signatures appearing on other documents in the case. These appear in particular on the Notice Determining Tenancy at Will of 3rd December 2002 and on an affidavit dated 30th May 2001 which she indisputably swore and filed in Cause 202 of 2000. This is an affidavit which was sworn before another very reputable and well-known Justice of the Peace, Mrs. Vernicia Watler, on that date. In it, Christaline disclaims Cause 202 of 2000 which was purportedly filed in her name as plaintiff



against Marlene as defendant, stating that she gave no-one permission to file such an action in her name. She also in the 30th May 2001 affidavit, affirmed the validity of the 30th July 1999 transfer of title to Marlene and confirmed her intention that Marlene should inherit the property. This affidavit was sworn and filed in court by Christaline McLaughlin, thereby effectively determining in Cause 202 of 2001, some eight (8) months after the Severance Notice of 13th September 2000 was purportedly signed by her. The impression one gets from all these circumstances, including the comparison of signatures, is that although dated 13th September 2000 the Severance Notice was signed by Christaline, like the 2003 affidavit, after she was diagnosed as suffering from dementia in March 2003.

29. And so the circumstances which attended the drafting and execution of the 2003 affidavit and the purported Severance Notice dated 13 September 2000 – not least the condition of the signatures and the absence of any independent verification of their voluntary execution by Christaline McLaughlin – leave me with serious misgivings about their authenticity. I therefore reject them.

30. I am also compelled to note for the record, that my misgivings about these documents were in no sense assuaged by the fact that Marquiss, as he was particularly anxious to explain, would have had no expectation of personal gain because of the import of these documents. He was at pains to point out that, if accepted by the court, they would instead benefit only his younger brother Michael, the Defendant. I therefore note in this regard Marlene's evidence, as to Marquiss' motive for taking sides with



Michael. While I reject these documents for the reasons already explained, the account that follows, provides what I regard as a plausible explanation for the creation and execution of these documents.

31. It emerged in cross-examination of Marquiss McLaughlin by Ms. Brooks, that he had been appointed sole executor of their father's estate. Lloyd McLaughlin's estate had comprised all other inheritances, as Christaline's only asset had been the family home. It seems that Marquiss had been appointed because, as the most formally educated of the siblings, he had been deferred to by the others and so selected by their father. It also emerged in cross-examination, that, as executor, he had sold some 31 acres of estate land. According to him this was at a price of $45,000, a price about which George and Alvin expressed great scepticism as being exceptionally low. At all events, although all were equally entitled, no other sibling received any distribution from Marquiss. According to him, this was the result of his personal assumption of liability for repayment to Government of their father's cost of medical treatment overseas – costs of some $65,000 which the Government had primarily assumed. As no other sibling had helped to repay that liability, he felt entitled to keep the proceeds of sale of the lands.

32. It was, however, suggested to him by Ms. Brooks, that it was this state of affairs, with the rest of the family being very upset with him and mindful that his brother Michael was the only sibling who did not own a home, that he decided to support Michael's bid in this case for one-half of the property. Moreover, that he has taken this stance

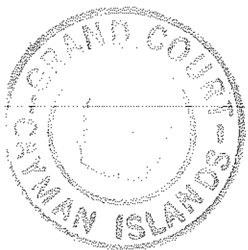
although he well knew that it had been both his father's and mother's intention, that the property should go to Marlene.

33. While admitting that he was aware that that had been his mother's intention, his response was that she had been entitled to change her mind, concluding that "*I am a grown man and I only want to see justice done.*"

34. Whatever his motive, for reasons already explained, I do not regard Marquiss McLaughlin's evidence - as to the circumstances under which his mother allegedly sought to renounce the transfer of title she had voluntarily executed on 30th July 1999 - as reliable.

35. I have serious misgivings that the attempt to create the appearance of a renouncement by Christaline McLaughlin was the result of Marquiss' collusion with Michael in furtherance of Michael's cause. I feel compelled to note that Michael's terse response under cross-examination, revealed his utter reliance on Marquiss' in this regard, where he asserted that "*my mother had given instructions to Marquiss to do his best (to get the title changed) but Marlene blocked it.*"

36. Marlene did indeed "block" the Severance Notice by withholding her signature. For such a document to be valid and effective, it required the signature of the joint proprietors, as section 100(3) of the RLL specifically provides:



> "*(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship,*

and the severance shall be completed by registration of the joint proprietors as proprietors in common in equal shares and by filing the instrument."

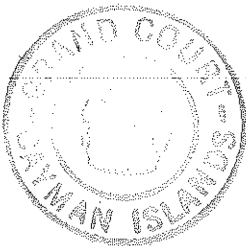
Marlene explained the absence of her signature from the Severance Notice. She said that she recalled at some stage being presented with the document when her mother was alive and she spoke to her about it. Her mother's response was that she should not sign it and that she had no intention of signing it herself.

Given the mandatory requirements of the RLL for both of their signatures, the document is invalid and ineffective in law as an instrument of severance of joint proprietorship and can have no consequence for Marlene's succession in title as joint proprietor.

37. I therefore reject Michael's case as it is based on the alleged renouncement by their mother and the alleged Severance Notice.

38. With that failed attempt to show renouncement and severance of joint proprietorship on the part of his mother, Michael's case for a proprietary estoppel comes to rest only upon his allegation that she and Marlene had promised him a half-interest in the property if he renovated the house, a promise upon which he says he acted to his detriment. This is what he said in evidence in this regard:

"I talked to my mother in May 1999 and told her I was getting married in July. She said, "You are welcome to come back home – I leaving the place for you and Marlene". She said "You welcome to fix up the place. I leaving it for you and Marlene."



Once I moved into the property I started working on the property – we made agreement that I would get money from my mother (to fix up the place) – me, Marlene and George made agreement. George knows about it.

I changed the entire roof, change 10 windows, all the sheetrock throughout the house, tiled the bathroom and paint. When I moved in the whole house was leaking, my mother had buckets all over the place.

....

I paid quite a bit for some of the repairs.

Since 1999 I have been responsible for maintaining the property."

39. While Marlene (and those siblings who support her case) acknowledge that Michael did carry out some repairs to the property including some repairs to the roof, they deny that it was as extensive as he claims and that he contributed anything apart from his labour. They explained that although he is a skilled sheet-rocker, he was unemployed in 1999 and for some time subsequently and so had no funds of his own to contribute. The funds, they said, came from their mother's account, an account on which the elder brothers Naaman and George had signing authority and this was the account from which funds were provided to Michael as the need arose to purchase materials. These payments were stopped by George however, because Michael refused to provide the receipts when requested, as had been agreed. According to

Marlene and George, they had become concerned that he was using their mother's funds for his own purposes, including for his copious consumption of alcohol.

40. Moreover, says Marlene - in which she is again supported by George and the documentary evidence - the single most significant work done to the house involved the entire replacement of the roof after hurricane Ivan and this work did not involve Michael. Rather, the funds for this came from the National Hurricane Recovery Fund and, although the funds were granted to Marlene as the owner of the property, they were paid directly to the contractor – Jernat Construction Limited – by Government.

41. Although Michael denied ever having been asked to produce receipts, he did not deny that the source of such funding as he was given and spent for repairs to the house, came from his mother's account.

42. All in all, the picture that emerges from the evidence, is one showing that Michael contributed in kind to the repairs and upkeep of the property by provision of his labour but that the extent of his contributions is far outweighed by his occupation of the property with his family, rent-free for some fifteen (15) years since 1999.

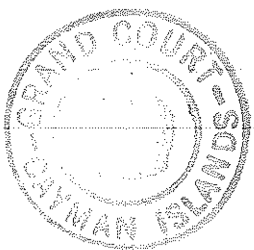
The case law

43. Given the foregoing conclusions of fact, the following brief discussion of the case law is intended to explain why Michael's case for a proprietary estoppel (or beneficial tenancy in common, if one regards the Severance Notice as relied upon evidentially in support of such an equitable claim) must also fail.

44. Where a claimant asserts that legal title registered to two parties as joint tenants should instead be regarded as a beneficial tenancy in common, the burden will rest upon him to establish the basis for such a claim. Thus, in this case, Michael assumes the burden of proving the authenticity of the putative Severance Notice, the very burden, for reasons already explained, he has failed to discharge.

45. The principles were applied by the Privy Council in an appeal originating from this Court in *Roulston v Panton (Administrator of the Estate of O. Hinds)* 1952-79 CILR 369. There, two lifelong friends had purchased together at various times several parcels of land, some of the conveyances of which were expressed as being to them as joint tenants. Upon the death of one of them, her administrator asserted that the other did not acquire the entire interests in the parcels of land by right of survivorship, but that she could claim only a one-half interest to reflect her beneficial interest as a tenant in common, referring to the greater financial contributions to the acquisitions alleged to have been made by the deceased.

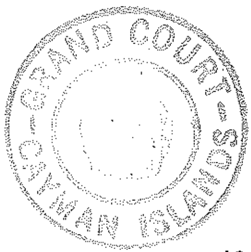
46. The Privy Council rejected the administrator's claim. It was held (per Lord Russell of Killowen), that since the conveyances of the legal estates were made to the two parties as joint tenants, it was for the claimant who asserted a beneficial tenancy in common to establish it, as resulting either (i) from evidence of intention to that effect; (ii) from evidence of circumstances surrounding the acquisition in joint names which in equity would be regarded as sufficient justification for departing from the situation at law; or (iii) from evidence that a subsequent severance of the beneficial interest in



the joint tenancy had occurred. Like in that case where the administrator failed to discharge the burden of proof, in this case, given my findings already expressed above, Michael has adduced no evidence that even comes close to establishing a beneficial tenancy in common on any of the three bases for such a claim.

47. That then disposes of the claim in equity in this case as it may be based upon the purported Severance Notice (as distinct from any claim under section 100(3) of the RLL by reliance upon it and as already dealt with above). But there is still what appears to be presented as a separate claim for a proprietary estoppel[2]. That is Michael's reliance, not only on the impugned Severance Notice, but also upon the alleged representations on the part of his mother and Marlene, coupled with his being let into occupation and his alleged actions to his detriment, by way of improvements to the property.

48. A person who claims a beneficial interest in land but in whom the legal estate in the land is not vested, nonetheless also assumes the burden of proving that the legal owner holds the interests he claims upon trust to give effect to his beneficial interest as *cestui que* trust. See *Gissing v Gissing* [1970] 3 W.L.R 255 H.L. (per Lord Reid, Viscount Dilhorne and Lord Diplock, respectively at pp. 896 D-f, 900B and 904H).



49. This statement of principle has gained statutory expression in the Registered Land Law (the RLL) where at section 23 (2004 Revision) it states (in relevant part) that:

[2] I note for the sake of completeness that other witnesses provided affidavit evidence on this issue. On Marlene's side another brother Ollen McLaughlin gave an affidavit in support of her case which he later retracted by letter to the Court during the course of the trial. On Michael's side, eldest brother Naaman McLaughlin and niece Vernilee and nephew Denroy gave affidavits in support. None of these witnesses appeared for cross-examination and so I attach no weight to their affidavits.

"23. …….. the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever…….

(a) ……
(b) ……….

Provided that-

(i) nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee; ……."

50. The assertion in his counterclaim of a proprietary estoppel, constitutes Michael's attempt to discharge the burden upon him by proving that Marlene, as the legal owner, is estopped from denying that she holds one-half the beneficial interests in the property on trust for him.

51. *Halsbury's Laws of England*[3] advises that, in seeking to find a proprietary estoppel based upon a promise of an interest in land, there is a three-fold enquiry to be undertaken. This is an enquiry which is not based on the claimant's (A's) mistaken understanding of the relationship with the legal owner (B) but on an agreement between A and B or upon B's encouragement of A's expectations. Thus the court will enquire:

(a) whether an equity in favour of B arises out of the conduct and relationship of the parties;

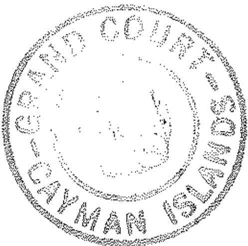
[3] 5th Ed. Vol. 16(2) (Re-issue 5)

(b) what is the extent of the equity, if one is established; and

(c) what is the relief appropriate to satisfy the equity.

52. The textbook says that the basis of this development in this field of the law is to be found in the dissenting judgment by Lord Kingsdown in *Ramsden v Dyson and Thornton* (1866) LR 1 HL 129 at 170:

> *"If a man, under a verbal agreement with a landlord for a certain interest in land, or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a Court of equity will compel the landlord to give effect to such promise or expectation."*



53. Accordingly, unlike other kinds of estoppel by representation that may not be used to found a cause of action[4], proprietary estoppel may be a cause of action but only where it involves the promise of an interest in land.

54. And further relevant to the present case, as the Court of Appeal recently reaffirmed in *Scott v Rankin* 2012(2) CILR 385[5]; where a claimant for a proprietary estoppel bases his claim in whole or in part upon an allegation that he acted to his detriment by making renovations or improvements to the land, he must establish that the legal owner had acquiesced in or encouraged his actions.

[4] See Halsburys op. cit ibid and the cases mentioned at footnote 19 including *Short v British Railways Board* [1974] 1 WLR at 781, per Latey J: *"estoppel is a shield and not a spear"*

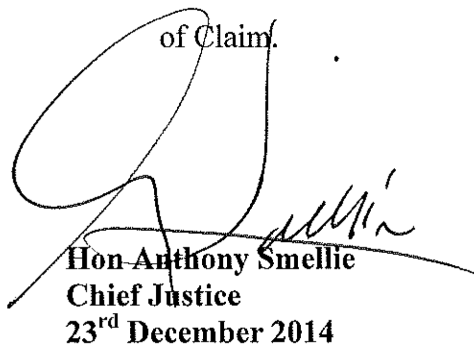
[5] At paras 11 – 15 per Chadwick P and para 95 per Campbell JA.

55. On the basis of my foregoing conclusions on the facts in this case, no promise of any interest in the property was made to Michael either by Christaline or Marlene. Nor did either acquiesce in or encourage his acting to his detriment by way of incurring expenses or making significant improvements to the property; expenses or improvements which in any event, I find that he did not incur or make.

56. Accordingly, Michael's claim in equity for a proprietary estoppel also fails.

57. Marlene succeeds on her claim and Michael's counter-claim is rejected in its entirety. Marlene is entitled immediately to recover possession of the property. She is also entitled to her costs of the action, to be taxed if not agreed.

58. I will hear submissions as to her claim for mesne profits, as pleaded in her Statement of Claim.



Hon Anthony Smellie
Chief Justice
23rd December 2014