



[2018] JMSC Civ 73

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2016 HCV 00141

IN THE MATTER of all that parcel of land part of Port Morant in the parish of Saint Thomas containing by survey One Rood Twenty-six Perches and Four Tenths of a Perch of the shape and dimensions and butting as appears by the Plan thereof and being part of the land comprised in the Certificate of Title registered at Volume 1323 and Folio 443 of the Register Book of Titles

AND

IN THE MATTER of the Registration of Titles Act

AND

IN EQUITY

BETWEEN	CAREN CRANSTON	CLAIMANT
AND	TAMAZINE SAMUELS	1ST DEFENDANT
AND	GAIRY TOORIE	2ND DEFENDANT

IN CHAMBERS

Mr. Leroy Equiano and Miss Denise McFarlane instructed by Marvalyn Smith for the Claimant

Miss Lavern Gayle and Miss Sarah Bailey instructed by Scott, Bhoorasingh & Bonnick for the Defendants

Heard: March 21 and April 27, 2018

Equity – Whether claimant has an equitable interest in property - Proprietary Estoppel – Whether claimant’s evidence is hearsay evidence – Part 30 of the Civil Procedure Rules 2002

A. NEMBHARD, J (AG.)

[1] The Claimant, Caren Cranston, by way of a Fixed Date Claim Form which was filed on the 18th day of January 2016, seeks the following Orders of the Court:-

1. A Declaration that the Claimant is entitled to a one hundred percent (100%) interest in the 2nd house located at the back of the property situate at Harbour Road, Port Morant, in the parish of St. Thomas;
2. An Order that the 1st and 2nd Defendants compensate the Claimant for the full value of the second house on the subject property based on the current market value;
3. That the Defendants are ordered to pay the market value of the second house within ninety (90) days;
4. An Order that should the 1st and 2nd Defendants fail to comply with number three (3) above that the Claimant’s name be added to the Title and that she be allowed to live peacefully and unmolested by the 1st and 2nd Defendants;
5. That the Registrar of the Supreme Court be authorized to sign all and any documents necessary herein, if either party refuses to carry out the Order of the Court.

SUMMARY OF THE EVIDENCE ON THE CLAIMANT'S CASE

CAREN CRANSTON

[2] The Affidavits of Caren Cranston, which were filed on the 18th day of January 2016 and the 30th day of June 2017, respectively, were permitted to stand as her evidence in chief.

[3] She gave evidence that she resides at Harbour Head Road, Port Morant, in the parish of St. Thomas and at 69 Fredd McLaren Boulevard, Markham, Ontario, Canada and is an accounting professional. She is the niece of the 1st Defendant, Tamazine Samuels and the cousin of the 2nd Defendant, Gairy Toorie.

[4] The property in dispute is located at Harbour Head Road, Port Morant, in the parish of St. Thomas and is family property where she has lived with her mother, Victoria Lindsay, undisturbed and unmolested for more than forty (40) years.

[5] There are two (2) houses on the said property, one (1) located at the front of the said property while the second is located at the rear. It is the second house that is in dispute in this case (disputed house).

[6] The disputed house was never the original house on the property. It was built by her maternal grandfather, Charlton Lindsay, as a two (2) bedroom board and concrete structure which he gave to Victoria Lindsay, as a wedding gift. Victoria Lindsay lived there until her death in June 2015.

[7] Relying on the averments made by Charlton Lindsay, Caren Cranston and Victoria Lindsay have improved the disputed house from its original board structure. The disputed house currently is a two (2) bedroom structure with all the modern amenities, the value of which is Three Million Dollars (\$3,000,000.00) with a reinstatement value of Four Million Seven Hundred Thousand Dollars (\$4,700,000.00).

[8] Tamazine Samuels never resided in the disputed house. She migrated to the United States of America (USA) in the 1960s and had no connection with it until 2000, when she returned to the Island.

[9] The disputed house was badly damaged by Hurricane Gilbert in 1988. Caren Cranston gave Victoria Lindsay money to effect major repairs to its roof and structure.

[10] After the passage of Hurricane Gilbert, the vertical posts on which a part of the disputed house rested needed to be reinforced and the roof, windows and doors had to be changed. About two (2) years later, extensive work was done on the disputed house. The flooring was changed from board to concrete, the foundation was reinforced and a bathroom and a kitchen were added, along with concrete steps and awnings. The windows and doors were replaced with more modern ones, the roof was completely changed, the old, fragile concrete walls were replaced and the board sections were replaced with concrete.

[11] These renovations were made over a period of time.

[12] Tamazine Samuels raised no objections to these renovations being made and made no claim to the disputed house. She assisted with these renovations by withdrawing moneys from a bank account of Caren Cranston and Victoria Lindsay and making payments to the workmen and by purchasing material.

[13] In cross examination Caren Cranston denied that she grew up in the house that is located at the front of the premises and that the disputed house had always been rented to tenants.

[14] She testified that her parents got married in 1964 or 1965.

WAYNE CRANSTON

[15] The Court heard next from Wayne Cranston, whose Affidavit, which was filed on the 30th day of June 2017, was permitted to stand as his evidence in chief.

- [16] Wayne Cranston is the sister of Caren Cranston and the son of Victoria Lindsay. His evidence was that in 1974 he, along with his mother and siblings, went to live in the disputed house. He remembered the disputed house as being an old two (2) bedroom dwelling with a living room and a small veranda. The roof was made from zinc and board and there was no kitchen or bathroom attached.
- [17] His evidence supported that of Caren Cranston in respect of the renovations and repairs made to the disputed house by his mother and sister. All the windows, doors, flooring, walls, as well as the roof, had to have been changed after the passing of Hurricane Gilbert.

WINSTON PEARCY

- [18] The next witness called on behalf of Caren Cranston was Mr. Winston Percy. His affidavit, which was filed on the 30th day of June 2017, was permitted to stand as his evidence in chief.
- [19] Winston Percy's evidence was that it was he who built the disputed house, on the instructions of Charlton Lindsay, between 1962 and 1963.
- [20] As a result of the passage of Hurricane Gilbert the roof of the disputed house was damaged.
- [21] In 2000 he built a bathroom, kitchen, sewer toilet on the disputed house and replaced the damaged roof with a zinc roof. This work he indicated was completed within two and a half months.
- [22] Tamazine Samuels paid him to do this work on behalf of Caren Cranston and her mother.

NICOLA FRASER

[23] Nicola Fraser, whose Affidavit filed on the 30th day of June 2017 was permitted to stand as her evidence in chief, gave similar evidence as to the original composition of the disputed house and the damage it sustained as a result of the passing of Hurricane Gilbert.

[24] That was the case for the Claimant.

SUMMARY OF THE EVIDENCE ON THE DEFENDANTS' CASE**TAMAZINE SAMUELS**

[25] The Court heard from Miss Tamazine Samuels, the 1st Defendant and her Affidavits filed on the 13th day of April and the 31st day of August 2017, respectively, were permitted to stand as her evidence in chief.

[26] She testified that she is one of the registered proprietors of the disputed house. She contended that the disputed house was the house that was originally built on the land. A second house was built on the land in the 1970s, in which she currently resides.

[27] Her evidence was that she gave Victoria Lindsay permission to occupy one (1) room in the original house. Victoria migrated to Canada and returned to Jamaica in or around 1998. Upon Victoria's return to the Island she (Tamazine) gave her (Victoria) permission to live in the disputed house until her death with instructions to carry out no improvements to it.

[28] Without her permission Victoria added a kitchen, bathroom and an awning to the disputed house.

- [29] Tamazine Samuels contended that the disputed house was never a dilapidated board house and that Caren never resided in the disputed house. The disputed house was always rented to tenants.
- [30] In or around 1966 she migrated to the USA. Victoria was allowed to add a kitchen and a bathroom to the disputed house for her own comfort and had no permission to carry out any of the other improvements made to the disputed house.
- [31] Tamazine Samuels contended further that Winston Percy was not responsible for the initial construction of the disputed house and that she made no payments to him on behalf of Caren and/or Victoria Lindsay, for work that he had done on their behalf.
- [32] The disputed house was never disposed of by way of a gift to Victoria Lindsay.
- [33] In cross examination certain inconsistencies in her evidence were highlighted. These were inconsistencies in her evidence contained in paragraphs six (6), ten (10) and eleven (11) of her Affidavit filed on the 31st day of August 2017 and paragraphs four (4), five (5) and nine (9) of her Affidavit filed on the 13th day of April 2017, respectively.

CYNTHIA PEART

- [34] The final witness from whom the Court heard was Miss Cynthia Peart. Her Affidavit, which was filed on the 31st day of August 2017, was permitted to stand as her evidence in chief.
- [35] Cynthia Peart gave evidence that Tamazine Samuels is her older sister. She stated that her father showed her the Certificate of Title to the property on which the disputed house is located and that Tamazine Samuels' name is on the said Certificate of Title.

- [36] She testified that it was Tamazine Samuels who built the house that is located at the front of the said property on which the disputed house is located and that the second house was always rented to tenants. The second house was first rented out by her father and subsequent to his death, by her mother.
- [37] Victoria Lindsay came to live in the disputed house when she was older than three (3) months but not yet able to walk. When she (Cynthia Peart) left St. Thomas Victoria Lindsay was living in Spanish Town, in the parish of St. Catherine.
- [38] Cynthia Peart gave evidence that she visited the disputed house subsequent to the passage of Hurricane Gilbert and that, at the time of her visit, the roof of the disputed house was intact.
- [39] That was the case for the Defendants.
- [40] Before the commencement of the trial in the instant matter Learned Counsel Miss Lauren Glave, who appears for the Defendants, raised a preliminary objection to paragraphs five (5), seven (7) and thirteen (13) of the Affidavit of Caren Cranston which was filed on the 30th day of June 2017 and paragraph fourteen (14) of the Affidavit of Winston Percy which was filed on the 30th day of June 2017.
- [41] The objection was raised on the basis that the evidence is hearsay evidence and does not fall within any of the exceptions to the rule against hearsay.
- [42] It is instructive, at this juncture, to examine the evidence about which the complaint is made.
- [43] Paragraph five (5) of the Affidavit of Caren Cranston filed on the 30th day of June 2017 reads as follows:-

“I was informed by my mother and other older relatives and I believe it to be true, that the disputed house was built by my maternal grandfather, Mr.

Charlton Lindsay, deceased, as a two (2) bedroom board and concrete structure house and that he gave it to my mother, Miss Victoria Lindsay, deceased, as a gift while she was dating my father Oswald Cranston and was planning on getting married, so they could have a place to live.”

[44] Paragraph seven (7) of the same Affidavit reads:-

“I have been informed and truly believe the same to be true that the Defendant was asked by her father to leave the house, this is the main house and then the Defendant moved and went and lived at a premises further down the street from the house. After a short time she migrated to the United States of America and her other sister went to live in Kingston.”

[45] Paragraph thirteen (13) of the same Affidavit reads:-

“I was informed and I do believe the same to be true that the disputed house was constructed in the 1960s and as stated above the original structure was severely damaged by Hurricane Gilbert and several other weather conditions.”

[46] Paragraph four (4) of the Affidavit of Caren Cranston filed on the 18th day of January 2016 reads:-

“That the said premises in dispute was given to my late mother Victoria Lindsay by her father upon her marriage as a wedding present and that my late mother has lived at the said premises all her life until her death in June 2015.”

[47] Paragraph eight (8) of the same Affidavit reads:-

“That over the years my mother counselled me to ensure that I improve upon the disputed property so that I would have somewhere in Jamaica that is fit for habitation if and when I got tired of living abroad and at those

moments she would remind me that this property is family property and no one can run me away from the property because it was a gift from her father to her upon her marriage to my dad.”

[48] Paragraph nine (9) of the same Affidavit reads:-

“To my knowledge, information and belief, there is no deed of this gift but notwithstanding the absence of a deed of gift, over the past forty (40) years my mother and I have relied on the averments of my maternal grandfather and her father, the late Charlton Lindsay that this is her home.”

[49] Paragraph ten (10) of the same Affidavit of Caren Cranston that was filed on the 18th day of January 2016 reads as follows:-

“That [my] late mother and I, along with other family members [who] were told the same thing, have improved upon the value of the said property.”

THE FACTUAL ISSUES IN DISPUTE

[50] Listed below are the factual issues that are in dispute in the instant matter:-

- i. Did Victoria Lindsay receive the disputed house as a gift during her lifetime?
- ii. Did Caren Cranston and Victoria Lindsay expend moneys to renovate the disputed house with the prior knowledge and consent of Tamazine Samuels and Gairy Toorie?
- iii. Were the renovations made for the personal comfort of Caren Cranston and Victoria Lindsay?

- iv. Were Tamazine Samuels and Gairy Toorie aware of these renovations that were made to the disputed house and did they assist with those renovations and in particular the 1st Defendant, Tamazine Samuels?

THE LEGAL ISSUES IN DISPUTE

[51] The legal issues in dispute are:-

- i. Does Caren Cranston's evidence, in relation to the gift of the disputed house to Victoria Lindsay and in relation to their reliance on the averments of the late Charlton Lindsay to effect renovations to it, violate the rule against hearsay evidence?
- ii. Was ownership of the disputed house transferred to Victoria Lindsay during her lifetime?
- iii. Is Caren Cranston entitled to a one hundred percent (100%) interest in the disputed house?
- iv. Does Caren Cranston have an equitable interest in the disputed house?

THE LAW

[52] The instant action has been brought before the Court by way of a Fixed Date Claim Form by Caren Cranston by virtue of which she seeks declaratory relief. It is trite law by now that the burden of proof rests on her to prove her case on a balance of probabilities that she has an interest in the disputed house and that the doctrine of proprietary estoppel applies.

[53] The legal burden of proof is the obligation of a party to meet the requirement of a rule of law that a fact in issue be proved (or disproved) by a preponderance of the evidence.

[54] What is the degree of the burden borne by Caren Cranston in a civil proceeding such as this?

[55] In **Miller v Minister of Pensions** [1947] 2 All ER 372 at 373-374, Denning J, speaking of the degree of cogency which evidence must reach in order that it may discharge the legal burden in a civil case, said:-

“That degree is well settled. It must carry a reasonable degree of probability but not so high as is required in a criminal case. If the evidence is such that the tribunal can say ‘we think it more probable than not’, the burden is discharged but if the probabilities are equal it is not.”

[56] What is an estoppel?

[57] An ‘estoppel’ bars the object of it from asserting some fact or facts, or sometimes, something that is a mixture of fact and law, that stands in the way of some right claimed by the person entitled to the benefit of the estoppel.

[58] The estoppel becomes a ‘proprietary’ estoppel - a sub-species of ‘promissory estoppel’ – if the right claimed is a proprietary right, usually a right to or over land but, in principle, equally available in relation to chattels or choses in action.

[59] In the Court of Appeal decision of **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ 6 Morrison JA (as he then was) stated:-

“Although proprietary estoppel is not based on contract, it is therefore always necessary to have regard to the nature and terms of any agreement between the parties. In the absence of agreement, the important starting point must be, firstly, whether there has been a

representation (or assurance) by the landowner, capable of giving rise to an expectation that is not speculative, that she will not insist on her strict legal rights. Secondly, there must be evidence of reliance on the representation (or change of position on the strength of it) by the person claiming the equity. Thirdly, some resultant detriment (or disadvantage) to that person arising from the unconscionable withdrawal of the representation by the landowner must be shown. But unconscionability, standing by itself, without the precedent elements of an estoppel will not give rise to a cause of action.”

[60] The three (3) elements that are required therefore are, as set out by the learned authors of Gray & Gray, (at paragraph 9.2.8), that “*a successful claim of proprietary estoppel thus depends, in some form or other, on the demonstration of three (3) elements:-*

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

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

“...unconscionability of conduct may well lead to a remedy but, in my opinion, proprietary estoppel cannot be the route to it unless the ingredients for a proprietary estoppel are present. These ingredients should include, in principle, a proprietary claim made by a claimant and an answer to that claim based on some fact, some point of mixed fact and law, that the person against whom the claim is made can be estopped from asserting. Proprietary estoppel requires clarity as to what it is that the object of the estoppel is estopped from denying or asserting and clarity as

to the interest in the property in question that that denial, or assertion, would otherwise defeat. If these requirements are not recognized, proprietary estoppel will lose contact with its roots and risk becoming unprincipled and therefore unpredictable, if it has not already become so.”

- [62] **Attorney-General of Hong Kong and another v Humphreys Estate (Queens Gardens) Limited [1987] 2 All ER 387** makes it clear that it is important in every case in which a claim based on proprietary estoppel is made, to have regard to the particular facts of the case.
- [63] In that case, a written agreement, expressed to be ‘subject to contract’, for the purchase of development property had been signed. The agreement stated that the terms could be varied or withdrawn and that any agreement was subject to the documents necessary to give legal effect to the transaction being executed and registered. It was therefore clear that neither party was permitted to take possession of the property and to spend money on it.
- [64] Subsequently, the owners of the property decided to withdraw from the transaction and gave notice terminating the intended purchaser’s licence to occupy the property.
- [65] The intended purchaser’s claim to the property based on proprietary estoppel failed because, given the terms of the agreement between the parties, it had chosen “to begin and elected to continue on terms that either party might suffer a change of mind and withdraw.” Per Lord Templeman, delivering the judgment of the Privy Council, at page 395.
- [66] The reason why, in a ‘subject to contract’ case, proprietary estoppel cannot ordinarily arise, is that, the would-be purchaser’s expectation of acquiring an interest in the property in question is subject to a contingency that is entirely under the control of the other party to the negotiations. (Per Lord Scott at

paragraph 25 of the judgment in **Yeoman's Row Management Limited and Another v Cobbe** (supra).

[67] In **Taylor Fashions Limited v Liverpool Victoria Friendly Society and Old & Campbell Limited v Liverpool Victoria Friendly Society** [1979] EWHC Ch 1, Oliver J stated at paragraph 11 of his judgment:-

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

ANALYSIS

Does Caren Cranston's evidence, in relation to the gift of the disputed house to Victoria Lindsay and in relation to their reliance on the averments of the late Charlton Lindsay to effect renovations to it, violate the rule against hearsay evidence?

[68] The rule against hearsay applies to all kinds of assertion, whether made orally, in writing or by conduct.

[69] According to the rule against hearsay, an assertion other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact asserted. This formulation conflates two (2) common law rules, the rule that the previous assertions of the witness who is testifying are inadmissible as evidence of the facts stated (sometimes spoken of as the 'rule against narrative', or the rule against 'self-corroboration'), and the rule that assertions by persons other than the witness who is testifying are inadmissible as evidence of the facts asserted (the rule against hearsay in the strict sense).

[70] Most authorities concur in the view that:-

“Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by evidence, not the truth of the statement but the fact that it was made.” (**Subramaniam v Public Prosecutor** [1956] 1 WLR 965 at 969.)

- [71] A careful examination of the evidence of Caren Cranston, in relation to the alleged gift of the disputed house to Victoria Lindsay by Charlton Lindsay, reveals that she purports to give evidence of something that her mother told her.
- [72] At paragraph five (5) of her Affidavit which was sworn to on 30 June 2017 she says “I was informed by my mother and other older relatives and I believe it to be true, that the disputed house was built by my maternal grandfather...and that he gave it to my mother, Victoria Lindsay, deceased, as a gift while she was dating my father Oswald Cranston...”
- [73] Caren Cranston has given evidence of something that was told to her by her mother and other persons who themselves have not been called as witnesses in the trial of the instant matter. This portion of the evidence is being submitted for consideration as proof of its truth. This evidence would be hearsay.
- [74] The evidence at paragraph seven (7) of the Affidavit of Caren Cranston which was filed on 30 June 2017, that “the Defendant was asked by her father to leave the house” would also be hearsay.
- [75] Paragraph thirteen (13) of the said Affidavit which reads in part “I was informed and I do believe the same to be true that the disputed house was constructed in the 1960s...” would also be hearsay evidence.

- [76] In paragraph four (4) of the Affidavit of Caren Cranston which was filed on 18 January 2016, she gives evidence that “the said premises in dispute was given to my late mother Victoria Lindsay by her father upon her marriage as a wedding present...” This alleged gift of the disputed house to her mother is one of the bases on which Caren Cranston makes this claim to an interest in the disputed house.
- [77] In paragraph eight (8) of the same Affidavit Caren Cranston states that over the years Victoria Lindsay counselled her to ensure that she improves the disputed property because it was a gift from her (Victoria Lindsay’s) father upon her marriage.
- [78] This evidence too, coming from Caren Cranston, violates the rule against hearsay.
- [79] At paragraph nine (9) Caren Cranston again states “to my knowledge, information and belief, there is no deed of this gift but notwithstanding the absence of a deed of gift, over the past forty (40) years, my mother and I have relied on the averments of my maternal grandfather and her father, the late Charlton Lindsay that it is her home.” This evidence from Caren Cranston, as to the averments allegedly made by Charlton Lindsay, would also be hearsay.
- [80] At paragraph ten (10) of the same Affidavit Caren Cranston says “that (my) mother and I, along with other family members (who) were told the same thing improved upon the value of the same property.”
- [81] **Part 30 of the Civil Procedure Rules, 2002**, (CPR), provides guidance as to the contents of Affidavits.
- [82] Rule 30.3 (1) of the CPR provides:-

“(1) The general rule is that an affidavit may contain only such facts as the deponent is able to prove from his or her own knowledge.

(2) However, an affidavit may contain statements of information and belief

(a) where any of the Rules allows; and

(b) where the affidavit is for use in an application for summary judgment under Part 15 or any procedural or interlocutory application provided that the affidavit indicates –

(i) which of the statements in it are made from the deponent’s own knowledge and which are matters of information or belief, and

(ii) the source of any matters of information and belief.”

[83] After a careful consideration of the evidence on the Claimant’s case the Court finds that the evidence as to the averments allegedly made by Charlton Lindsay to Victoria Lindsay is hearsay.

[84] There is no independent evidence before the Court that is capable of corroborating that of Caren Cranston as to the said alleged averments or that as to the alleged gift of the disputed house to Victoria Lindsay.

[85] In those circumstances this Court is of the view that there is no evidence before it that is capable of defeating the Defendants’ title to the land on which the disputed house is located and by extension the disputed house itself. There is no evidence before the Court on which it can properly rely to find that Caren Cranston has established a proprietary estoppel.

- [86] It is clear to the Court that Caren Cranston believes that what she was told by Victoria Lindsay is true. However, her evidence that Victoria Lindsay told her that her (Victoria Lindsay's) father told her (Victoria Lindsay) that he was giving the disputed house to her (Victoria Lindsay) as a wedding gift, is hearsay and is not evidence on which the Court can properly rely.
- [87] Caren Cranston has given evidence that she was born on 10 October 1964. In 1964 or 1965, when she says her parents got married and the time around which this wedding gift was allegedly given to Victoria Lindsay, she (Caren Cranston) would have been a young baby. It is therefore quite clear that she speaks in her evidence of something that must have been told to her and could not have been from her own knowledge.
- [88] In **Inwards v Baker** [1962] 2 QB 29 an indulgent father had encouraged his son to build a bungalow on his, the father's, land. The son had done so in the expectation, encouraged by the father that he, the son, would be permitted to remain in occupation.
- [89] The Court of Appeal held that the son had an equity entitling him to live in the bungalow as long as he wished. In effect, the father, and after his death the trustees of his Will, were estopped from denying that the son's licence to occupy the land was an irrevocable one.
- [90] In the **Inwards v Baker** case it was apparent that each party knew of the state of the title but that the son had been led to believe that he would get an interest in the land on which he had built and, indeed, the overwhelming probability was that that was indeed the father's intention at the time.
- [91] By virtue of the fact that Caren Cranston seeks to rely on what Victoria Lindsay told her in relation to the disputed house and does not speak from her own knowledge in respect of same, the position in the instant case is quite different.

Was ownership of the disputed house transferred to Victoria Lindsay during her lifetime?

- [92]** The Court, having found that Caren Cranston's evidence, as to the wedding gift allegedly given to Victoria Lindsay by her father and as to the averments allegedly made by Charlton Cranston to Victoria Lindsay, is hearsay, asks the question - was the disputed house transferred to Victoria Lindsay during her lifetime?
- [93]** The learned authors of Maudsley & Burn's Land Law, Cases and Materials, 5th edition at pages 94 and 95, have stated that all lands and all interests therein lie in grant. All conveyances of land or any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.
- [94]** The basic doctrines of Land Law developed at Common Law under a system in which title to land was proved by the production of a deed recording the history of transactions affecting the land.
- [95]** That system was steadily overtaken by a system which was based on the registration of title to land.
- [96]** Where the system of registration is in operation, all transfers of legal title are required to be by registration of the transferee's name in the register. The old cumbrous method of conveyancing by title deeds was therefore dispensed with.
- [97]** A system of registration of title was introduced in England as far back as 1862 but only on an optional basis. A revised system of registration of title was introduced contained in the Land Registration Acts 1925-1971 and Rules of 1925. The 1925 registration system provided for the registration of legal titles to land and the protection of other interests in and over land.

- [98] A similar position obtained in Jamaica whereby there was a system by Common Law by which title to land was proved by the production of a Deed.
- [99] The Registration of Titles Act now provides for the registration of all lands and for the transfers of legal title to be by registration of the transferee's name in the Register Book of Titles.
- [100] In the instant case, the uncontradicted evidence is that Tamazine Samuels had the land on which the disputed house sits surveyed and that it is she who obtained a Certificate of Title to the said land.
- [101] The evidence also is that the alleged gift of the disputed house to Victoria Lindsay was not by way of deed. Consequently, no legal interest could have passed to Victoria Lindsay.
- [102] Caren Cranston's claim would therefore also fail on this ground.

Is Caren Cranston entitled to a one hundred percent (100%) interest in the disputed house? /Does Caren Cranston have an equitable interest in the disputed house?

- [103] The Court finds that there is no evidence before it, on which it can properly rely, to say that Caren Cranston has established that she is entitled to a one hundred percent (100%) interest in the disputed house or that she has an equitable interest in same.
- [104] The Court finds that the evidence on which she relies in an effort to prove this said interest is hearsay evidence and the Court is constrained to find that her claim on these grounds must also fail.
- [105] Before parting with this matter the Court has also considered whether it should make an Order that Caren Cranston be compensated for the renovations and/or improvements made to the disputed house.

[106] In seeking to determine whether such an Order should properly be made the Court has had regard to the fact that Victoria Lindsay occupied the disputed house until her death in 2015. From the time that the Defendants were registered on the Certificate of Title as the registered proprietors of the land on which the disputed house is located, in 2000, to the time of Victoria Lindsay's death in 2015, the Defendants would have been able to have rented out the disputed house to tenants. Although no claim has been brought for mesne profits this is a factor to which the Court has had regard.

CONCLUSION

[107] In conclusion, the Court finds that Caren Cranston has failed to prove that she has a one hundred percent (100%) interest in the disputed house or that she has an equitable interest in same. The evidence on which she relies is hearsay evidence and is not evidence on which the Court can properly rely to find that the title held by the Defendants is defeated or that a proprietary estoppel has been established.

DISPOSITION

[108] It is hereby ordered that:-

- (i) Judgment for the Defendants;
- (ii) Costs to the Defendants to be taxed if not sooner agreed;
- (iii) Leave to appeal is granted;
- (iv) Defendants' Attorneys-at-Law to prepare, file and serve the Orders herein.