IN THE SUPREME COURT OF JUDICATURE

THE CIVIL DIVISION

CLAIM NO. 2013 HCV 00192

BETWEEN CORRINE GRIFFITHS-BROWN CLAIMANT

AND CONARD JAMES BROWN DEFENDANT

Mr. Debayo A. Adedipe for the Claimant

Mr. Stephen Shelton instructed by Myers Fletcher & Gordon for the Defendant

Heard: 17th September, 2014 and August 19, 2015

Division of Property – Whether subject property was family home whether subject property was a gift to the Defendant – whether Claimant made contributions to improvement of family home – whether Claimant entitled to beneficial interest therein – Proprietary Estoppel – whether Claimant entitled to interest in animals: Property (Rights of Spouses) Act 2004 Sections 6, 7, 2 and 13

THOMPSON-JAMES J

Background

[1] The Claimant Corrine-Griffiths Brown, claims against the Defendant Conard James Brown, a proprietary interest in a house situate at Spitzbergen, Manchester (hereinafter referred to as 'the property'), which forms part of a 9 acre parcel of land registered at Volume 1265 Folio 466 in the Register Book of Titles. She makes her claim pursuant to the

Property Rights of Spouses Act, on the basis that the said property was the family home whilst she and the Defendant were married. The Claimant also claims an interest in 70 pigs, 8 goats and 4 cows, she alleges that the parties jointly owned and were rearing at the time of their separation, and for which the Defendant has not accounted to her.

[2] The property is currently registered, in the name of Mrs. Isolyn Brown, who was registered on transmission in her capacity as the Administratrix of her late Husband Daniel Brown's estate. Daniel Brown, the Defendant's father, who died intestate in January of 2005, was the sole proprietor of the property prior to his death.

[3] The parties were married June 15, 1999, separated in March of 2005, and were divorced January 13, 2012. During the course of the marriage, up to March 2005, the parties lived in the property, along with the Defendant's mother, a few of his siblings, and a few of his siblings' children. It is to be noted that this claim was filed by way of fixed date claim form on the 11th January 2013, over seven (7) years following the separation of the parties, and two (2) days prior to the expiration of (one) 1 year from the grant of the decree absolute.

[4] The Defendant emphatically denies that the Claimant made any contribution to the renovations, and asserts that the house had always been a concrete structure. Furthermore, the house was never given to him and was always owned by his father up until the time of his death, and thereafter belonged to his mother. According to the Defendant, the house was used as the Brown's family property, and family members would often times stay at the home when they visited from overseas.

[5] In respect of the animals, the Defendant denies the Claimant's claim, and asserts that at the time of the couple's separation, he had only 4 goats. The other animals, which were never as many as the Claimant claims, had died from illness. In any event, the

Defendant contends that the cause of action in respect of the animals is statute barred pursuant to the Limitation of Actions Act of Jamaica, as well as section 3 of the Limitation Act of the United Kingdom (UK) 1623.

The Claim

[6] The Claimant seeks the following orders:

a) A declaration that she is entitled to a half interest in the family home;

b) A declaration that she is entitled to a half share in the animals and their increase and profit from 2005 to the date of the judgment;

c) An order that the Defendant pays to her the value of her share as above;

d) An order that the Defendant pays the cost of this action;

e) Such further or other order as the Court deems just.

The Claimant's account

[7] The Claimant **Mrs. Corrine Griffiths-Brown** testifies that prior to their marriage on June 15, 1999 the parties were involved in a relationship. They separated in March 2005 and were divorced January 13, 2012. The Defendant, Conard Brown's father a property owner and farmer told her that he had made provisions for all his children and gave land to them except for the Defendant, his last child to whom he had given his house. The house in which he, the Defendant and his wife lived. After the marriage she moved into the house along with her daughter. At present Miss Isolyn Brown no longer lives in the house.

[8] When she first knew the house it was an old wattle and daub structure. Renovation of the house commenced a little before the marriage, she assisted. She gave the Defendant money to buy blocks as she believed the Defendant when he told her the house was his. After marriage she continued to pool her resources with those of the Defendant. The house was refurbished, improved and a downstairs room added. This room earned income from boarders.

[9] The marriage started experiencing difficulties in 2005. Daniel Brown died January 2005. March 2005 the Defendant moved her out of the house. The renovations were completed. She did not take anything from the house. The Defendant had moved some furniture and her clothing. He did not join her at the new location. He then moved his present wife into the house that they used to occupy.

[10] They reared animals as a commercial venture, on the lands surrounding the house. When she was moved out of the house they had 70 pigs, 8 goats and 4 cows together valued at $650,000. The Defendant has not accounted to her for any income earned from the boarders, sales of animal or their income since 2005.

[12] In cross-examination she denied that one of Daniel Brown's daughter and her 2 children lived in the house at the time. She said she knew that she was going to live at the time with the Defendant's parents and she knows that Daniel and Isolyn had 9 children who along with 3 others live at the house. Daniel told her that he had already given the house to the Defendant. She saw no proof of the gift.

[13] Daniel told her that he would not leave the house until he died and Isolyn would still live there. Daniel and Isolyn have adult children who live abroad and when they visit Jamaica they stay at the house. She does not agree that the subject house belongs to all the siblings and their mother as well.

[14] She assisted in planting coffee. The cows were not sold prior to her leaving. She does not know about the pigs dying as they were not being looked after whilst the Defendant was on construction site. The goats accumulated to 10.

The Defendant's account

[15] The Defendant **Conard Brown** testifies that prior to the marriage they lived in the family home owned by his father along with his mother and other siblings. The home was constructed of concrete. After the marriage, he moved the Claimant into his family home. Living there with him at the time were his father, mother, a brother Henry and three of his parent's grand children.

[16] Two years prior to the marriage his father did modification and renovation to the house. Father gave him permission to live in the house along with the Claimant. After his siblings migrated they visited regularly and stayed at the house. It is not true that he and the Claimant renovated his father's house. Neither did they put money together to buy material and engage workers to refurbish and improve the house.

[17] In 2002 he and his father decided to convert the garage into a room to earn income. He did most of the work. Family and friends assisted. Father supplied some money, the Claimant contributed nothing to the project. She worked during the marriage. Her money was used for her own purpose and to look after her child. She also assisted in repairing her father's house which was damaged in a hurricane.

[18] January 2005 his father died intestate and the house and the remaining land was transferred to his mother Isolyn Brown on transmission. Prior to this case the Claimant raised no issue in relation to any claim to the house.

[19] Prior to the marriage he had 4 cows which number increased to 6. These were sold during the mad cow disease scare. At this stage he had 20 pigs. He sold 5 and the others died from scowers disease. He gave up the livestock business and only reentered in 2010 when he went into partnership with Peter McClymont and 2 others, rearing beef cattle.

[20] In **cross-examination** he testifies that the has been occupying land that his father deeded to him in a document in 2002. He denied taking his current wife into the house prior to the marriage. Claimant made no contribution to the house before they were married neither did she contribute after the marriage. Work on the house continued but the Claimant made no contribution neither did she engage with him in raising livestock. She had nothing to do with the pigs.

[21] The house that he lived in with Claimant, his parents and other family members was never made of wattle and daub. It was constructed of concrete and blocks. The Claimant found the home to which she moved, he assisted her. She took all the furniture they acquired during the marriage with her. Presently mother lives at the subject house and he has to take care of her.

[22] He and the Claimant did not plant an acre of coffee and it is not true that he is denying the existence of the 70 pigs, 8 goats and 4 cows because he does not want the Claimant to share in them.

[23] **Mr. Peter McClymont** testifies that he knows Daniel Brown and Isolyn Brown. Daniel was a big land owner and farmer and well known in the district. Daniel sold land, livestock and produce for a living and owned a 5 bedroom concrete home. Some of the children lived there with him. Many of the children reside overseas. When they return to the island they visited and stay at the house.

[24] When he met the Defendant in 1992 the Defendant was a farmer rearing cows but he had ceased due to the mad cow disease scare. He gave the Defendant 2 young female pigs. The herd grew to quite a few. Defendant sold some of the pigs but lost others to scowers disease. He tried rearing goats but they died as well.

[25] He did not know the Claimant to be involved in the farming business with the Defendant. When she left the Defendants house in 2005, Defendant had basically given up farming and had gone into the construction work. This was up to 2010. The Defendant is presently in partnership with him and 2 others rearing beef cattle.

[26] He was around in 1998 when the Defendant's father renovated the house and in 2002 when he enclosed the garage. Defendant did most of the work. This house has always been a large country house made of concrete and stood out in the area.

[27] Several issues of fact and law arise from the divergence of accounts on both sides. These are as follows:

i. Whether the house was given to the Defendant as a gift by his late father;
ii. Whether the house was substantially renovated after the parties were married;
iii. Whether the Claimant contributed to the renovation of the house;
iv. Whether the house can be classified as the 'family home' thus bringing it within the ambit of the Property Rights of Spouses Act;
v. Whether the Claimant is entitled to one- half beneficial interest in the house pursuant to the Property Rights of Spouses Act;
vi. Whether the Defendant, at the time of the couple's separation, had in his control 70 pigs, 8 goats and 4 cows;
vii. Whether the claim in respect of the animals is statute barred pursuant to section 46 of the Limitation of Actions Act of Jamaica, as well as section 3 of the Limitation Act of the United Kingdom (UK) 1623;
viii. Whether the Claimant is entitled to an interest in the animals or a share in the value/proceeds thereof.

LAW & ANALYSIS

The Family Home

[27] Section 6 of the Property Rights of Spouses Act (hereinafter referred to as "PROSA") provides:

> *(1) Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home –*
>
> *(a) On the grant of a decree of dissolution of a marriage or the termination of cohabitation;*
>
> *(b) On the grant of a decree of nullity of marriage;*
>
> *(c) Where a husband and wife have separated and there is no likelihood of reconciliation.*
>
> *(2) Except where the family home is held by the spouses as joint tenants, on the termination of marriage or cohabitation caused by death, the surviving spouse shall be entitled to one-half share of the family home.*

[28] Section 7 further provides:

> *(1) Where in circumstances of any particular case the Court is of the opinion that it would be unreasonable or unjust for each spouse to be entitled to one-half the family home, the Court may, upon application by an interested party, make such order as it thinks reasonable taking into consideration such factors as the Court thinks relevant including the following –*
>
> *(a) That the family home was inherited by one spouse;*
>
> *(b) That the family home was already owned by one spouse at the time of the marriage or the beginning of cohabitation;*
>
> *(c) That the marriage is of short duration.*

(2) In subsection (1) "interested party" means –

(a) a spouse;

(b) a relevant child; or

(c) any other person within whom the Court is satisfied has sufficient interest in the

matter.

[29] Section 2(1) defines "family home" as:

"…the dwelling-house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings or improvements appurtenant to such dwelling-house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling-house which is a gift to one spouse by a donor who intended that spouse alone to benefit".

[30] The Claimant contends, in its Skeleton Submissions, that the property the subject of this claim is the "family home" pursuant to the above provisions, for the following reasons:

i. "The residence which the parties shared during the marriage as their principal and accustomed place of abode was given to the defendant by his father, the registered proprietor.
ii. The defendant's deceased father acknowledged to the Claimant that he had indeed made a gift of the house to the Defendant.

iii. The Claimant contributed to the improvement of the dwelling-house against the background of this information.

iv. Any claim by the defendant's mother as Administratix of her late husband's estate would be subject to such dealings as were made by her deceased husband during his lifetime".

[31] The Defendant, however, in his written Closing Submissions, argues that the house in question does not fall within the definition of *family home* as set out in section 2 (1) of the Act, and therefore does not fall within the ambit of the sections of the Act that entitle a spouse to a one-half share or any other share of the family home.

[32] In that regard, the Defendant places emphasis on the words *'wholly owned by either or both of the spouses'*, and argues that the house in question could not be considered a 'family home' as "it was not solely owned by the Defendant or Claimant or both at any relevant time" for the following reasons:

a) "The Defendant's father was the registered proprietor of the property up to the time of his death in January 2005;
b) The Defendant's mother became registered proprietor when she was registered on transmission on 2nd October 2007, in respect of the entire parcel of land including the dwelling house the subject of this claim.
c) The Defendant's mother is the transferee of the said property pursuant to sections 130, 70, 71, and 26 of the **Registration of Titles Act** and shall for the purposes of the Act be deemed the absolute proprietor thereof…*"entitled to hold such land in fee simple together with all rights, privileges and hold such land in fee simple together with all the rights, privileges and appurtenances belonging thereto, subject to*

incumberances registered on the title and to such liabilities, rights and interests as may under the provision of the Act subsist over the land when it was brought under the operation of the Act but otherwise free from all other estates and interests."

d) Pursuant to the aforementioned statute, the house and land in question is owned by the Defendant's mother as proprietor in fee simple, free from all other estates or interests whatsoever save for the trusts which were created by statute.

e) Under the **Intestates Estate's Act**, sections 4 and 5, the Defendant's mother is entitled to one-half of the Defendant's father's real estate, including the home and holds the other half in trust for their eight (8) surviving children and the issue of their two (2) deceased children".

f) Under the Common Law and the **Married Women's Property Act** prior to 10th March, 2004 and since then when the **Property Rights of Spouses Act** was first passed the Defendant's mother, the spouse of his deceased father was entitled to a one-half share of the family home and the Defendant's father could not give away that share without her consent.

g) The lands surrounding the family home have been given to family members by Deeds of Gift but the same remain in the one holding in the title, as no surveys have been done and no sub-division has yet been granted cutting off these parcels of land."

[33] It is clear from the submissions of both parties that there is no dispute that the parties indeed resided at the subject property for the duration of their marriage prior to separation, as *'their only and principal residence'*. It is equally clear that the property was not owned by the Claimant, nor was it owned jointly by the Claimant and the Defendant. Further, the Defendant was never registered as proprietor. The evidence submitted to the Court is that the property was at all material times registered in the Register Book of Titles to the Defendant's father, Daniel Brown, as part of the 9 acre parcel of land owned by him.

The question to be decided, in light of these facts, is whether or not it can be declared that the property was wholly owned by the Defendant by virtue of said property being given to him as a gift from his father during his lifetime, if in fact it was so given to him as a gift.

[34] The Defendant cites the authority of Royston Johnson v Andrew Cole-Johnson [2012] JMSC Civ. 142, Claim No. 2009 HCV 06151, in which the Court dealt with a similar question as to whether or not the relevant premises was 'wholly' owned and thus could be classified as the 'family home'. In that case, the Court determined that the relevant property which was registered in the names of the Respondent and her brother, was not the 'family home', despite the fact that it was the principal place of residence for the parties during the marriage, for the reason that it was not 'wholly' owned by the Respondent, (meaning not solely or exclusively owned by the Respondent).

[35] Though helpful in respect of the definition of 'wholly owned', the case does not assist in deciding the issue at hand, since the name of one of the spouses involved in that case appeared on the registered title, albeit not by itself, whilst in this case, the name of the person who the Claimant alleges to be the true owner does not appear on the title at all. Additionally, in Johnson's case the property had been paid for by the spouse whose name was on the title via mortgage payments, and was not alleged to be a gift.

Was the property a gift to the Defendant?

[36] The Claimant admits in her Written Submissions that the only evidence that the Defendant's father had made a gift of the house to the Defendant is her own evidence. The Claimant gave evidence that she was told by Daniel Brown before the marriage that he had given the house to the Defendant, and further, that the Defendant himself told her his father had given him the house because his father had given land to all the other children except him. The Claimant states that she is not claiming that the gift was of the entire 9

acre property, but rather only the dwelling-house and the land appurtenant thereto. For this she relies on Weir v Tree 2014 JMCA Civ 12 at para.49, where the Court approved the view that the matrimonial home which was situated on 3 acres was confined to the family residence and the immediately surrounding land, and not the entire 3 acres.

[37] The Claimant further contends that the evidence of the gift is not excluded by the rule against hearsay, and is admissible as evidence of a declaration by Daniel Brown against his proprietary interest. For this she relies on Simpson v Hallahan-Tibbs RMCA 28/06 delivered 5/10/07. It should be noted however, that, the Defendant did not seek to exclude said evidence on the basis that it would indeed be admissible under Section 31 (A) of the Evidence Act as a declaration against one's proprietary interest. This Court agrees that the evidence is indeed admissible. However, as noted by the Court in the aforementioned case, having admitted the evidence, it is now a matter for the Court to decide whether or not it thinks the evidence is credible, and to consider it together with all the other evidence.

[38] In his evidence, the Defendant emphatically denied that the house was a gift, or that he told the Claimant that this was the case. He asserted that the house could not have been given to him as it was his mother's house, in which he and his other family members were allowed to live. Indeed, it is the evidence of both parties that, at all material times, the Defendant's mother lived at the house, along with other family members. The Defendant asserted that his parents were married for over 40 years, and lived together in the subject property for that entire time. The Defendant pointed out that the Claimant did not in her evidence in chief, speak to where Daniel Brown said his mother would go when he allegedly gave the house to his son, but on cross-examination she claimed that Mr. Brown had said he and his wife were to remain in the house until their death. On the other hand, it

was the Defendant's evidence that his father had told him prior to his death that the house belonged to his wife and on her death, to all his living children.

[39] The Defendant also gave evidence to the effect that all prior gifts of property that his father had given to his other siblings during his lifetime were done by way of deed, and so the inference is that for him to have given the Defendant property without having put it in a deed is not logical. That the other gifts of Daniel Brown were by way of deed has not been refuted. To aid this position the Defendant tendered into evidence a deed of gift (exhibit 2) in respect of another piece of property, purporting to transfer property from his father to himself. The Claimant, however, insinuates that this deed is fraudulent. The Claimant points out in her written submissions, that the Defendant had initially, in his evidence-in - chief, denied that his father had given him any land, and it was only later in his evidence-in-chief and cross examination that he 'contradictorily' asserted that his father had given him a piece of land via deed. The Claimant further questioned the validity of the signature purporting to be that of Daniel Brown, and points out that the Justice of the Peace who signed it was never called to give evidence. These things, the Claimant says, makes the purported gift via deed incredible.

The Defendant's explanation as to the above discrepancy in his evidence is that when he had stated that his father had not given him any land, he was referring to the time of his marriage, and that his father had given him land after that time, in 2002. I am of the view that this explanation is satisfactory in light of how the evidence was phrased. In Paragraph 13, the Defendant stated:

> *"My father never gave me any property or the house. He gave me permission to live in his house with my ex-wife, the Claimant herein. This was the family's home and all my siblings lived there and after they migrated, they visited regularly and stayed there."*

The previous paragraph, as well as the one following, both refer to the state of affairs regarding the house in question, prior to the marriage and at the time of the marriage, and thus appears consistent with the Defendant's explanation.

Paragraph 12 states:

> *"Two years before the marriage in November 1997, my father did modifications and renovations to the house. He sold produce, livestock and pieces of the land during that time."*

Paragraph 14 states:

> *"It is totally untrue that the house was a small old dirt house. From I was born this was a concrete house built with the box and cast method."*

Paragraph 15 states:

> *"This was the house where the Claimant and I lived until our divorce."*

Thus, the Court will not draw a negative inference from the aforesaid discrepancy.

Further, no evidence of fraud was tendered by the Claimant, or appears on the face of the deed itself. The Court is therefore of the view that, in the absence of proof of fraud, the deed is to be viewed as a legitimate document to be considered in deciding this case.

[40] The Defendant contends that his father would not, in any event, have been in a position to dispose of the house via gift without his mother's consent, as his mother would have been entitled to a one-half share in the property by virtue of being the spouse of his

late father. For this he relies on the Common Law and the Married Women's Property Act for the period prior to 2004, thereafter PROSA.

[41] In response to this, the Claimant argues that the Defendant's mother had no equity to the land pursuant to PROSA, as that Act came into force in the year 2006, and by then Daniel Brown had already died. She asserts that the Act does not operate retroactively, and persons who would have acquired vested rights to his estate as beneficiaries upon intestacy pursuant to the Intestate Estate and Property Charges Act could not be divested of those rights.

It must here be stated that on the issue of the retroactivity of **PROSA** the Claimant is mistaken. The Court of Appeal of Jamaica unanimously agreed in **Annette Brown v Orphiel Brown [2010] JMCA Civ 12, Civil Appeal no.12 of 2009** that PROSA is to operate with retroactive effect. In that regard. Isolyn Brown would have been entitled to a half share in the house.

[42] The Claimant posits that having been registered on transmission as proprietor of the property via her position as Administratrix of Daniel Brown's estate, Isolyn Brown would not have been freed from any obligations that her husband might have had in relation to the land. The Claimant cites Gardner v Lewis [1988] 53 WIR p236 for the principle that "the registered title is only conclusive as to the legal right but does not exclude equitable obligations such as those that would have bound Daniel Brown and his successor by transmission." The Court came to this decision after a consideration of Sections 68, 70 and 71 of the Registration of Titles Act of Jamaica.

It is agreed that this is so, but whether or not this aids the Claimant's case depends on whether or not Daniel Brown did in fact create equitable obligations re the land prior to his death in respect of the relevant property. That is, was the house a gift?

[43] It must be noted that the contribution that the Claimant alleges she made to the renovation, is only relevant insofar as it aids her claim that there was a gift of the property and that she would not have contributed to the renovations if she did not believe that the property belonged to her husband. Her alleged contributions however are not directly pertinent to the question of the property being the 'family home' as there is no assertion that she was sole or joint owner pursuant to Section 2 of PROSA. There is no evidence outside of the Claimant's own testimony, that she made any contribution to the renovations. In any event, even if there was, her contributions in and of themselves could not be said to be referable to any belief that the Defendant was to have the house. Indeed, it is plausible that the Claimant would make necessary contributions to assist with the upkeep of a house that she along with her husband occupied.

[44] I find that the preponderance of the evidence leads to the conclusion that the house was not gifted to the Defendant. The Claimant has not put forth concrete evidence to show on a balance of probabilities that the house was given to the Defendant. Indeed, it seems incredulous that Daniel Brown would have given away to his son, his house that he and his wife of over forty years had lived in, without alternate living arrangements and particularly for his wife. It is more plausible, as the Defendant posits, that Daniel Brown would have allowed his son and his son's new wife to occupy and use certain rooms in the premises. Further, the evidence of the consistency with which Daniel Brown gave gifts of property via deed, make it more probable, that he would have prepared a deed if he indeed intended to give the Defendant his house as a gift. I prefer the defendants evidence in this respect.

[45] In any event, as was found in **Dillwyn v Llewelyn [1861-73] All ER Rep 384**, (a case approved by **Pascoe v Turner [1979] 2 All ER 945**), It has been a longstanding principle that a Court of Equity will not complete an imperfect gift if anything is wanting to complete

the title of the donee, unless the donee has on the strength of the promise acted to his own detriment. Even if Daniel Brown had purported to give the property to the Defendant, the gift would have been imperfect owing to the lack of memorandum in writing, and the Court could not complete the gift unless the Defendant as donee had acted to his detriment based on said gift. In such case the Defendant would be the one with the cause of action, not the Claimant. The Defendant has not sought to do this.

[46] The Defendant contends that even if the Claimant's allegation that the house was a gift could be believed, the final part of the definition of "family home" would exclude it from falling within the ambit of the definition as said definition states "…shall not include such a dwelling house which is a gift to one spouse by a donor who intended that spouse alone to benefit". It is agreed that, had the property been a gift this would be so, but whether or not it could be considered the family home would depend on whether or not it was Daniel Brown's intention for his son alone to benefit. Based on my findings such a determination is not necessary.

[47] Further, the Court is of the view that, the house could not be considered as the 'family home' pursuant to **section 2 of PROSA**, as the house was not used *'wholly or mainly for the purpose of the household'*, the household being that of the Claimant and Defendant. Indeed, it has been the evidence of both parties that the Defendant's parents both lived in the house whilst they were living there, as well as other relatives.

Is the Claimant entitled to interest in the property pursuant to the principle of Proprietary Estoppel?

[48] The Claimant asserts that owing to her alleged contributions to the renovation of the house, the principle of *proprietary estoppel* ought to apply. She cites the case of Maxville Trenchfield v Leslie [1994] 31 JLR 497 in support of this contention. It must be noted that

the Claimant neglects to delve into exactly how it is that this principle ought to apply to the circumstances of this case.

[49] The Defendant on the other hand contends that the Maxville Trenchfield case is to be distinguished from the present case as it involves a promisor and promisee, whilst in the case at hand the claim is by a third party to whom no promise was made. The Defendant further argues that the Claimant was never in possession of the property and so cannot assert promissory estoppel or part performance.

[50] In **Maxville Trenchfield**, the Court of Appeal of Jamaica ruled in favour of the Respondent on the basis that there was sufficient evidence to find that the deceased (whose personal representative was the Appellant), promised the Respondent the gift of his house and the land around it, and the Respondent acted to her detriment as a result of that promise. Further, 'the parties had conducted their dealings between them on the assumption that the house and land would go to the respondent and it would have been unjust to allow the appellant who stands in the shoe of the deceased, to repudiate that promise and exercise his legal right to possession' (pg. 501).

The decision of the Court was based on the formulation of a type of proprietary estoppel referred to as *'Estoppel by encouragement or acquiesence'* as enunciated and refined by several cases reviewed by the Court, including **Pascoe v Turner [1979] 2 ALL ER 945**, **Inwards v Baker (1965) 1 ALL E.R. 446, Ramsden v. Dyson (1986) L.R.1 H.L. 129** and **Amalgamated Investment and Property Co. Ltd. (in liq.) v. Texas Commerce International Bank Ltd. (1981) 3 ALL E.R. 577** in which the facts of the case were similar to those that are at hand.

The essence of the principle is that an equity may be created in property in favour of a promisee, where it can be proven that a land owner made a promise to the promisee that he would acquire an interest in said property, and the promisee relies on that promise to his detriment.

The Court of Appeal [at pg.500] quoted **Lord Kingsdown in Ramsden v. Dyson (1986) L.R.1 H.L. 129:**

> "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 obligation by him lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation."

The Court also drew on the words of Lord Denning, M.R in **Amalgamated Investment and Property Co. Ltd. (in liq.) v. Texas Commerce International Bank Ltd**. (1981) 3 All E.R. 577, (at p. 584):

> "When the parties to a transaction proceed on the basis of an underlying assumption (either of fact or of law, and whether due to misrepresentation or mistake, makes no difference), on which they have conducted the dealings between them, neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so."

[51] The Court is in agreement with the Defendant that the principle is not applicable to the facts of this case. On the evidence, no promise of an interest in the house was made to the Claimant and therefore there is no promise on which she could have relied to her detriment. No promise was made to her by

Daniel Brown or her ex-husband. On her own evidence, the alleged 'gift' was made to her husband, and not her. Even if a promise had been made to her ex-husband by way of an imperfect gift, which I have found was not the case on the evidence, any possible cause of action would lie with the Defendant and not the Claimant. Furthermore, the Claimant could not be said to have been in possession of the property at any time.

[52] Both parties differ as to what state the house was in when the Claimant began living there, there is no dispute that the house was indeed renovated. I prefer the Defendant's evidence supported by that of Peter McClymont that the house was never of wattle and daub but always a concrete structure.There is, however, no evidence, outside of Claimant's testimony, that the Claimant assisted with the renovations.

Is the Claim in respect of the animals statute barred?

[53] The Defendant contends that the claim is statute barred pursuant to the section 46 of the Limitation of Actions Act of Jamaica, as well as section 3 of the Limitation Act of the United Kingdom (UK) 1623. The Claimant in response says that pursuant to section 13 of PROSA it is not.

Section 13 of PROSA makes it clear that actions in respect of division of property must be made within 12 months of either dissolution of a marriage, termination of cohabitation, annulment of marriage, or separation. The Court is also empowered to extend the period for filing after hearing the applicant.

13.-(1) A spouse shall be entitled to apply to the Court for a division of property-

(a) on the grant of a decree of dissolution of a marriage or termination of cohabitation; or

(b) on the grant of a decree of nullity of marriage; or

(c) where a husband and wife have separated and there is no reasonable likelihood of reconciliation; or

(d) where one spouse is endangering the property or seriously diminishing its value, by gross mismanagement or by wilful or reckless dissipation of property or earnings.

(2) An application under subsection (1) (a), (b) or (c) shall be made within twelve months of the dissolution of a marriage, termination of cohabitation, annulment of marriage, or separation or such longer period as the Court may allow after hearing the applicant.

(3) For the purposes of subsection (1) (a) and (b) of this section and section 14 the definition of "spouse" shall include a former spouse.

Property is defined by Section 2 as

"… any real or personal property, any estate or interest in real or personal property, any money, any negotiable instrument, debt or other chose in action, or any other right or interest whether in possession or not to which the spouses or either of them is entitled."

Since the animals would fall within the ambit of this definition, and the claim was filed within one year after the decree absolute, the claim is not statute barred.

Did the Defendant possess animals owned jointly by the couple at the time of separation?

[54] The evidence in relation to this issue is that of the testimony of the parties, as well as that of the Defendant's witness Peter McClymont.

The Claimant asserts that at the time of separation, the Defendant had in his control 70 pigs, 8 goats and 4 cows, all of which were owned jointly by the pair. Whilst the Defendant only admits to having 4 goats. He contends that the other animals he had prior died from disease, and in any event were only being raised by himself and not the Claimant.

His witness gave evidence that he knew of the Defendant farming and rearing cows, pigs and goats at different times, and that these eventually died or were sold by the Defendant at a cheap price and lost some due to disease. The witness states that when the Claimant left the Defendant's home the Defendant had basically given up farming and gone into construction. He asserts that the Defendant eventually returned to farming in 2009, and in 2010, entered a partnership with the defendant and two other individuals, to rear beef cattle. The inference to be drawn is that the animals he owns now are owned jointly with himself and the other partners. I accept the Defendant's evidence along with that of his witness.

It is noteworthy that the Claimant had not attempted to recover the animals or proceeds thereof, she contends she is entitled to, within the past 10 years. In that regard, in my view, it would not be fair to award the Claimant half the proceeds of the 4 goats the Defendant admits to having.

[55] I find that the Claimant has failed to prove on a balance of probabilities that which she has alleged and is not entitled to any relief in relation thereto. The Claimant is neither entitled to a share in the property, nor any animals or proceeds thereof.

Order

Judgment for the Defendant

Costs to the Defendant to be agreed or taxed.