ND COURT OF THE CAYMAN ISLANDS
ON

CAUSE NO. GC2022-0019

BETWEEN:

FRANK ANTHONY CORNWALL

Plaintiff

v

ADAM MARVICK LLEWELYN AS ADMINSTRATOR
OF THE ESTATE OF KATHLEEN ANITA WHITTAKER (DECEASED)

Defendant

IN OPEN COURT

Appearances:	**Mr. Frank Cornwall Jr. in person** **Mr. H. Delroy Murray of Murray & Westerborg for the Defendant**
Before:	**The Chief Justice, The Hon. Justice Margaret Ramsay-Hale**
Heard:	**16, 17 and 18 April 2024**
Draft Circulated	**31 May 2024**
Judgment Delivered	**3 June 2024**

Land Law - proprietary estoppel - elements required for claim - the issue of detriment must be judged at the moment when the person who has given the assurance seeks to go back on it – Thorner v Major [2009] UKHL 18

JUDGMENT

Introduction

1. The Plaintiff, Frank Cornwall jr., is the great grandson of Ms Kathleen Anita Whittaker ("Ms Kathleen") of Rock Hole, George Town who owned property on Rock Hole Road in George Town registered as Block 14 CF Parcel 41. Ms Kathleen died intestate in 1985. The Defendant, Adam Llewelyn is the son of Ms Kathleen's daughter, Kathleen Alvernie Watson-Llewelyn ("Ms Alvernie") and the Administrator *de bonis non* of Ms Kathleen's estate.

2. Although Mr. Llewelyn is Mr. Cornwall's uncle, the men were both born in 1967 and were very close in their youth and early twenties. A dispute over family land arising from Mr. Cornwall's claim to be entitled to Ms Kathleen's property, to the exclusion of her children and/or their issue has, however, been the catalyst for a conflict which has strained the relationship between the two.

Background to the Claim

3. Mr. Cornwall, was born to Adrian, also known as Ann, who was the daughter of Ms Kathleens' daughter, Goldstein Whittaker Bodden ("Goldstein"). He was raised by his mother and his stepmother, Ms Kathleen's daughter, Frances Remelda Cornwall ("Ms Remelda") with whom he lived at Sound Round in George Town until 1981.

4. In 1981, Mr. Cornwall went to live with his mother at Ms Kathleen's home in Rock Hole and remained living there until Ms Kathleen passed away in 1985. After her death, he remained in his grandmother's home. He renovated and rebuilt it over the years, first replacing the foundation of the house which was built on stilts with concrete blocks and later, replacing the original wooden walls and floors, as the structure grew increasingly dilapidated. He lived in the house until 2018.

5. Some 5 years after Ms Kathleen's death, her daughter, Lorine Haywood, applied for Letters of Administration. She died in 1991 without administering the Estate. In 1994, her sister, Gwendolyn Elveda Cornwall more usually known as Elveda ("Ms Elveda") applied for Letters of Administration *de bonis non.* In 1998, she was registered on the Title as Administratrix.

6. Nothing was done by Ms Elveda to settle the Estate until 2018, when acting through her daughter, Tori, her Attorney, she caused the property to be advertised for sale and gave Mr. Cornwall notice to quit the premises.

7. In response, Mr. Cornwall made an application to the Registrar of Lands, Ms Sophia Williams, for a restriction to be placed against the property, claiming unregistered interest in the property as a "*beneficial and equitable part-owner".*[1]

8. At the conclusion of the resulting hearing, the Registrar accepted Mr. Cornwall's evidence that Ms Kathleen had made a promise to him that he *"could stay on the property"* [2] and that he had, in detrimental reliance on that promise, continuously improved the property

[1] Decision of the Registrar dated 28 January 2020, page 1
[2] Decision of the Registrar page 7
[3] *Ibid* page 7

over the ensuing years and *"treated the property as if it was his own, collecting rent and arranging for electricity and water for tenants on the property."* [3]

9. She found that he had *"continuously improved the property with the premise that he and his family could reside there*" and *"building his family home"* on the property. She also found that both Ms Kathleen and Ms Elveda, qua Administratrix*, "had permitted him to remain on the land for over thirty (30) years before making any attempt to terminate his licence to do so*." [4]

10. She held that, in the circumstances, it would be *"inequitable for him to vacate the property on which he has his home for some nearly thirty years when he was out in possession with the permission of his great grandmother and continued …after … Ms Gwendolyn Cornwall was registered as Adminstratrix",* concluding that he had *"an interest in the property by virtue of propriety estoppel."*[5]

11. She granted the restriction which was registered on 29 February 2019.

12. Ms Elveda died on 19 June 2021 without administering the property. On 28 April 2021, the defendant, Adam Llewelyn, was granted Letters of Administration *de bonis non.* It soon became apparent that there was a new sheriff in town as, after his appointment, Mr. Llewelyn began making changes at the property. These included having the meters which supplied electricity to the property put in his name, directing tenants to pay him rent and constructing fences on the property, going so far as to put a fence pole right by Mr. Cornwall's kitchen window.

13. On 25 January 2022, Mr. Cornwall commenced these proceedings against Mr. Llewelyn as Administrator, seeking *"to confirm his equitable interest by way of proprietary estoppel in the property."*[6]

14. He claims against Mr. Llewelyn a declaration that he is the owner of the property and an order directing the Registrar to record his ownership of the property as well as an account of any income from the property.

The Succession Act

15. Because Ms Kathleen died without a will, the intestacy rules apply to her Estate. Pursuant to the provisions of the **Succession Act (2021 Revision)** a trust arises on an intestacy in

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[4] *Ibid* page 8
[5] *Ibid* page 8
[6] Statement of Claim para 39

favour of the issue and other classes of relatives of the intestate. Relevantly, section 29 of the statute provides at subsection (1)(c):

> *"(c) if the intestate leaves issue but no husband, wife or civil partner, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;"*

16. Section 30 provides:

> *" 30. (1) Where, by this Act, the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts — (a) in trust in equal shares if more than one, for all or any of the children or child of the intestate, surviving the intestate, who attain the age of eighteen years or marry or enter into a civil partnership under that age, and for all or any of the issue surviving the intestate who attain the age of eighteen years or marry or enter into a civil partnership under that age of any child of the intestate who predeceases that intestate, such issue to take through all degrees according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;"*

17. As Ms Kathleen did not make a will leaving her property to Ann or Mr. Cornwall, all of her children and/or their issue are entitled to benefit from her Estate unless Mr. Cornwall can establish that it would be unconscionable if the property were not transferred to him.

The Doctrine of Proprietary Estoppel

18. The doctrine of proprietary estoppel rests on the fundamental principle that equity is concerned to prevent unconscionable conduct: see Robert Walker LJ in the case of *Gillet v Holt,* [2009] UKHL 18, [2001] Ch. 210 at 225.

19. In *Thorner v Major,* [2009] UKHL 18 the Court recognized the form of proprietary estoppel arising where a person has acted to their detriment in reliance on a promise made by another in relation to land. The Court identified three elements which had to be present in order to give rise to an estoppel:

(i) there must be a promise made by A to B that B has been or will be given an interest in property;
(ii) reasonable reliance on that promise; and

(iii) there must be an identifiable detriment to B if A resiles from the promise they have made.

20. As Lord Sales, speaking extra-judicially [7], pointed out proprietary estoppel does not impose duties or liabilities from the moment that the relevant promise is made. As explained by Hoffmann LJ in *Walton v Walton* (unrep) [1994] EWCA Civ J0414-1, the principle "*does not look forward into the future and guess what might happen. It looks backwards from the moment when the promise falls due to be performed and asks whether, in the circumstances which have actually happened, it would be unconscionable for the promise not to be kept.*"

21. The Court is thus concerned with the conduct of the promisee in reliance on the promise *before* the promise fell due to be performed which, in this case, was on the death of the putative promisor in 1985.

The Pleaded case
The Promise

22. Mr. Cornwall's' case, as pleaded, is that his mother, Ann, lived with her grandmother, Ms Katheleen, all her life and cooked, washed, cleaned and paid bills for her. As Ms Kathleen grew older, she required greater assistance and the increased burden of caring for her fell on Ann. When Ms Kathleen became bedridden in 1981, he helped his mother get her in and out of bed and bathe and dress her on a daily basis. He and his mother bore the significant financial burden of taking care of Ms Kathleen, a burden he assumed from a young age, using monies he earned by working in the evenings after school. When he became an adult, his financial contributions to the household increased.

23. Ms Kathleen died on 21 October 1985, shortly after he turned 18. At the date of her death, he was still living in what was her house. On numerous occasions before her death, Ms Kathleen stated that what she left behind was to be passed to his mother, Ann, and to him. This promise was reiterated on various occasions in his presence of Ms Remelda, Ms Alvernie and her son, Charles Leonard Whittaker.

24. He asserts that neighbours and others in the community were well aware of her intention, pleading that, "*The promise to transfer the property was widely and well known.*" [8]

25. Mr. Cornwall asserts that to ensure that he received the benefit of Ms Kathleen's promise, his stepmother, Ms Remelda, signed a Land Transfer by which she sought to have the property transferred to him.

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[7] Modern Studies in Property Law Conference, Oxford 29 March 202 available on the Supreme Court website.
[8] Para 22 Statement of Claim.

26. Finally, he pleads that the Second Administratrix, Ms. Elveda, told him that she would transfer the property to him because in recognition of his caring for the Ms Kathleen.[9] In a later, slightly contradictory pleading, Mr. Cornwall alleges that Ms Elveda told him that she was aware that Ms Kathleen had promised him the property to him and his mother and that indicated in 1998 that she was intending to transfer the property into his name. [10]

Acts done in Reliance on the Promise

27. Mr. Cornwall pleads that when he became an adult, his financial contributions to the household increased and that he ultimately assumed full responsibility for the property in 1987 which had only one other structure on it at the time. He continued to live in Ms Kathleen's house after her death, and renovated and rebuilt it in 1987. He remained there until 2018.

28. Mr. Cornwall also pleads that, in 1986, he replaced the other building which had become dilapidated so his maternal grandmother, Ms Kathleen's daughter Goldstein, could live in it and continue to be close by as she grew older and became in need of greater care and support from him. He secured funding from the Government to assist in the construction of this house, arranged for the building's construction and procured additional materials to complete it.

29. He alleges that in 1991 that he assisted in the construction of an additional room on this building to allow brothers, James and Jonathan Bodden, to move in. When Ms Goldstein died in 1992, the brothers continued to live in that house.

30. Mr. Cornwall also pleads that he assisted in the building of a third building on the property, this one for Ms Kathleen's son, Charles Leonard. While his granduncle bought most of the materials for this construction, Mr. Cornwall asserts that he also purchased additional materials to assist in the construction and provided some labour during its construction.

Detriment

31. Mr. Cornwall pleads that he made many sacrifices because of the promise made to him by Ms Kathleen. He relies, in particular, on the fact that he remained on the property and did not seek to buy land elsewhere or establish a new home for himself elsewhere, this in the *"wholehearted belief that the Property had been promised to himself and his mother."* [11]

[9] *ibid* para 17

[10] *ibid* p25

[11] Para 34

32. Mr. Cornwall also alleges that in addition to the construction of two dwellings at the property and the extension and maintenance of the third dwelling, he had taken on the general upkeep and ongoing maintenance of the property and planted fruit trees and shrubs to beautify the property with his mother from 1985 until her decease in 1989, and thereafter by himself, up until the present day.

33. Mr. Cornwall also pleads that, because of his commitments and because he had put everything he had into the property and into supporting and caring for the family members who lived on it, he did not pursue educational opportunities abroad.

The Evidence for the Plaintiff

34. Mr. Cornwall's evidence was that Ms Kathleen treated his mother as if she was her own child and that he was the apple of his great- grandmother's eye, her 'idol', her favourite child among all the grands and great grands. Shortly, after he went to live on the property in 1981, Ms Kathleen became bedridden. He and his mother cared for her. More particularly, he said that he helped his mother by lifting Ms Kathleen out of bed so his mother could change the bedclothes. He described this as his duty which he carried out every day until she died.

35. Throughout this period, Ms Kathleen *"…constantly made reference that what she had belonged to my mother, whatever she left behind was for Ann. 'What I got is for Ann.' She established that among her children."*

36. In 1983, his mother married Shervin. The family came together and built a room adjoining the house for her, and Mr. Cornwall, his mother, stepfather Shervin and uncle, Charles Leonard, all continued to live in the house.

37. In October 1985, Ms Kathleen died. Mr. Cornwall moved into the room they had built for her.

38. Mr. Cornwall got married in January 1987. Hs wife, Sharon, moved into that room with him. He was working at the Public Health Department of Environment at the time and started buying materials, intending to rebuild the home for his mother and himself.

39. With respect to acts done in reliance on the promise, Mr. Cornwall accepted that he did not build a separate dwelling on the property in 1987 as pleaded. Rather, in 1987, he *'built a new foundation'* for the house which meant, as was later shown in photographs of the property, that he had put concrete blocks under Ms Kathleen's house which had, until then, rested on wooden Over time, he renovated and repaired the entire house. He moved into the renovated structure in 1994 and has made his home there for the last 30 years.

40. It was his evidence that nobody took issue with the work he did on Ms Kathleen's house because *"everyone knew"* the property was his mother's: *"Even though she did not go and have it registered in her name, everybody knew the property was hers."* It was her grandmother's wish that she should have it for taking care of her as she did and although Ms Kathleen did not make a will, she told all of the family that the property was for his mother, Ann.

41. In 1988, a home was built on the property for his grandmother, Ms Goldstein, with financial assistance from the Government which he said he had procured. In 1989, his mother died and after she died, he assumed control of the property. In 1990, he had funds and he and the family put together and build a house for his uncle, Charles Leonard because the house he was living in - Ms Kathleen's house - kept deteriorating. His uncles, James and Jonathan came to live on the property with their mother, Ms Goldstein. In 1993, James built a room on to Ms Goldstein's house for himself which he lived in until he left the property after which he rented it out.

42. After his grandmother, Goldstein, his stepmother Ms Remelda, executed a Transfer of Land in 1989 purporting to convey the property to him to *"to acknowledge the wishes of [Ms Kathleen]."* He lamented that he had not taken the transfer to the Land Registry. He said that when he produced it to the Registrar, the Registrar noted that the document could not be registered because it was stale dated, apparently ignoring the obvious which was that Ms Remelda had no title to convey.

43. He acknowledged that Ms Lorine took out Letters of Administration in 1991 for Ms Kathleen's Estate but said she did this because his wife was a Jamaican and she was concerned that "*the Jamaicans"* would take over the property. He accepted in cross that Ms Lorine who he said knew of the promise, did not transfer the property to him. In 1995, he visited Ms Elveda, then the new Adminstratrix, in New York and she acknowledged the promise that was made to his mother. Although she remained as Administrator, she told him that, one day, she would turn the property back over to him. In cross-examination, he accepted that she had not transferred the property to him. He also said that she accepted in the hearing before the Registrar that the promise was made.

44. By 1994, the roof was on and although the renovations/ repairs to the house were not finished, he moved into the half-finished structure and remained there.

45. Throughout this period, the administrators did not interfere with his occupation, no one made any claims to the property and he remained in charge. This was, he said, because "*they all understood that the promise was made to me. Was made to my mother which in turn would come down on me."*

46. In 2000, Mr. Llewelyn moved unto the property and built an addition unto Charles's house.

47. In 2018, he applied to the Registrar for the restriction on the sale of the property. He asserted that during the hearing, Ms Elveda acknowledged the fact that a promise had been made to his mother.

48. After the Registrar granted the restriction, everything remained the same until Mr. Llewelyn obtained a grant of Letters of Administration and tried to take control of the property despite the fact that he, Mr. Cornwall, had lived there for over 40 years and had spent all the money and done everything on the property in reliance on the promise "*that it was going to be for me, given to me…. Everybody knows. Hereditary, it was supposed to be for me. Nobody in the family says else.*"

49. He said that if had known he would have been fought over the property in this way, he would have made different choices. Instead of pursuing opportunities to study abroad, he dedicated his life to caring for the older family members who lived on the property. Instead of buying other land, he had built his home there.

50. Under cross-examination, Mr. Cornwall accepted that when Ms Kathleen died in 1985, there were three structures on the property. He accepted the accuracy of certain aerial photographs that showed there were always three structures on the property, and not 4 as suggested by Mr. Cornwall in his application to the Registrar in which he stated that he built his house on the property in 1987.

51. Mr. Murray also suggested that the property was family land on which any member of the family could stay, if they needed a place to stay and not intended to be owned outright by any one family member. Mr. Cornwall refuted this suggestion, stating,

> *".. there was a promise made to my mother to be owner… She was the caregiver for my great grandmother and she made the promise to her. She accepted her as her own daughter. So she said that what was hers, she left it for [my mother]."*

Mr. Shervin McLean

52. Mr. Cornwall relied in support of his case on the evidence of his stepfather, Mr. Shervin Mclean, who stated that Ms Kathleen would always say that the property was for granddaughter Ann, who was her caregiver, and her great grandson "Junior".

53. He also said that when Ms Kathleen got bedridden, Junior would make it his duty to left her out of bed each morning so that Ann could change and bathe her. Ann was in charge of the property as she was the one taking care of Ms Kathleen and Ms Goldstein and making sure that Charles Leonard was okay. When she died, Junior took over the running and maintenance of the entire yard and property. It was Junior was who had

the house for his grandmother built while Lolo was in charge of assisting to get Charles Leonard's house built with help from Junior. Junior had started rebuilding Ms Kathleen's house before Ann died.

54. It was put to him that he had come to Court to assist Mr. Cornwall to which he responded that he had come to speak the truth.

The Defendant's Evidence

55. Mr. Llewellyn denied that there a was a promise made to Mr. Cornwall and his mother by Ms Kathleen that they should have the property. His evidence was that it was not intended that any one family member should have the property as it was family land and it was open to all family members to stay there if they were in need of a place to stay until they could find their feet. He made the point that the promise that nobody ever acknowledged the promise and that Ms Elveda's evidence, as recorded by the Registrar, was that she had allowed Mr. Cornwall to remain on the property until he could become financially stable but that the property belonged to her and another surviving sibling.

56. Mr. Llewelyn also took issue with the assertion that Mr. Cornwall and his mother, Ann, were Ms Kathleen's primary caregivers, stating that his mother, Alvernie, having the most means, made the greatest contribution to her mother's care, providing for her financially and preparing meals for her. He accepted that Mr. Cornwall had assisted in Ms Kathleen's care but denied any promise was made to him or his mother that the property would be there after her death.

57. Mr. Llewelyn's evidence was that in 1987 when Mr. Cornwall claimed to have built his house on the property, they had both recently left high school and were working in construction together and that neither had enough money to build anything. He said that Mr. Cornwall did not build anything on the property. Rather, what he had done over the years was to renovate Ms Kathleen's home. The renovations were within the original footprint of the building and had continued up to 2022, when Mr. Cornwall removed the wooden flooring and poured a concrete floor.

58. On the issue of Mr. Cornwall managing the property and keeping it clean, Mr. Llewelyn denied that this was so. He exhibited photographs to show that the property was kept in increasingly poor condition, with a derelict motorcycle and cars, car parts and other junk being amassed on property over time. He said the motorcycle had been on the property for the last 30 years and described Mr. Cornwall as a hoarder.

59. Mr. Llewelyn had also made his home on the property, building a duplex utilizing, in part, the house once occupied by his uncle, Charles Leonard, which he bought from Charles Leonard's wife. He and his family live in one side and the other side is rented.

60. The agreed evidence is that James built a room adjoining his grandmother's house in which he lived. When he moved off the property, he rented the room and collected the rents until Mr. Lewellyn was appointed Administrator.

61. Mr. Llewelyn made the point that Mr. Cornwall has never collected any rents at the property, contrary to the evidence he had given before the Registrar.

Findings of fact and application of the law to those facts

62. Mr. Cornwall's *viva voce* evidence was at odds in many respects with his pleaded case as well as the case he advanced before the Registrar.

63. What emerged clearly from the evidence was that Mr. Cornwall was asserting a promise made to his mother Ann by Ms Kathleen and not a promise made to him. This assertion was repeatedly made by Mr. Cornwall in the course of his evidence (see paras 34, 39, 44 and 50 *supra*). Although Mr. Cornwall may have had in mind that if the property were left to his mother, then he would inherit it and own it one day - *"… it was going to be for me, given to me…. Everybody knows. Hereditary, it was supposed to be for me. Nobody in the family says else* "- but from his evidence, the ready inference is that he is relying in this claim on a promise made to his mother. It is also the claims as pleaded: *"the Deceased stated on numerous occasions before her death that what she left behind…was to be passed to the Plaintiff's mother and in turn to the Plaintiff."*

64. This is, in my view, fatal to Mr. Cornwall's claim, as the doctrine requires that the promise flow from the promissor to the person asserting the right in the property in issue. In any event, the only evidence supporting Mr. Cornwall's claim that that there was such a promise was the evidence of his stepfather, Mr. Shervin McLean which was singularly unpersuasive. Further, there is no evidence before the Court that Ann did anything in reliance on this putative promise. The evidence is that she had fallen pregnant with Mr. Cornwall at the tender age of 13 years and had lived with her grandmother, Ms Kathleen, ever since. There is no evidence that she ever worked outside the home and no evidence that she was induced to give up any opportunities for work to care for her grandmother or changed her position in any way, in reliance on the promise which Ms Kathleen is said to have made. From the evidence, such as it is, Ann continued as before, living in her grandmother's home and taking care of her as she became enfeebled.

65. Even if I were wrong in that, and Mr. Cornwall was asserting that a promise of the property had been made to both of them, there is no supporting evidence other than that of Mr. McLean. Although he asserted that his stepmother, Ms Remelda had executed a transfer of the property seeking in good faith to enforce Ms Kathleen's promise, it appears from a notarized letter dated 22 January 1997, signed by Ms Remelda and disclosed partway

through the trial, that she recognized the interest of her siblings in their mother's estate. In that letter, she expressed the wish that her share of her mother's Estate be given to Mr. Cornwall after her death. It did not help Mr. Cornwall's' case that, although the notary stated that Ms Remelda appeared before her personally, he suggested that the letter had, in fact, been signed by Ms Elveda. Finally, contrary to his assertion that, in the hearing before the Registrar, Ms Elveda had agreed that there had been a promise, the Registrar records in her decision that Ms Elveda's evidence that she permitted Mr. Cornwall to remain on the property but that it belonged to her and her other surviving sibling.

66. Having considered the evidence, I am satisfied and find that Mr. Cornwall has failed to discharge his burden of proving on a balance of probability that there was a promise made to Ann or to them both that the property was to be theirs. The claim therefore falls to be dismissed as Mr. Cornwall has failed to establish an essential element of the claim.

67. Even had Mr. Cornwall succeeded in establishing that a promise had been made to him, I would have found that there was no relevant conduct to establish that he had relied on the promise. It is clear from the evidence that Mr. Cornwall did not build a house on the property in 1987 as he alleged in his pleaded case and as he told the Registrar. In 1987 he was, as Mr. Llewellyn pointed out, only 20 years old. Despite Mr. Cornwall's protest that he earned good money in construction, Mr. Llewelyn who worked in construction with Mr. Cornwall and said and I accept that that neither of them could have built a house in those early years.

68. He grossly exaggerated the work he had done at the premises by 1997 both before the Registrar where he averred that he had built his house on the property in 1987 and in his pleaded case where he stated that he *"had already renovated and rebuilt [Ms Kathleen's house] in 1987".*

69. The evidence was quite clear that what Mr. Cornwall did in 1987 was put cement blocks under the foundation of Ms Kathleen's house which was previously resting on wooden stilts. He continued to repair and renovate Ms Kathleen's house in which he continued to live after her death - rent free - replacing all the old and rotted wood over many years, replacing the wooden floors in the original home in 2022, accepting as I do the evidence of Mr. Llewelyn who I found to be the more reliable witness who have his evidence without any embellishment.

70. With respect to the house in which his grandmother, Goldstein, lived which had become dilapidated, I do not accept Mr. Cornwall's evidence that he replaced this building in [1986], [12] having secured funding from the Government, procuring additional materials and attending for its construction as I am satisfied and find that his claim was similarly inflated.

[12] Statement of Claim at para 28. The date appears t be wrong.

71. I am also satisfied and find that, in the same vein, Mr. Cornwall exaggerated his contribution to the construction of Charles Leonard's house on the property, when Ms Kathleen's became too dilapidated to be lived in.

72. Not to belabour the point, but the chronology given by Mr. Cornwall's only serves to highlight the internal inconsistencies in his case: it was his pleaded case that he had already rebuilt and renovated and rebuilt Ms Kathleen's house by 1987 and it was his evidence that in 1991 Charles Leonard had to move out of Ms Kathleen's house because the house was in too dilapidated a state.

73. I also accept and find that he did not collect rents or manage the property, which he relies on as incidents of property control and ownership, though it is clear he treated the property very much as his own by filling the yard with junk, as Mr. Llewelyn stated.

74. Even if Mr. Cornwall had done any of any of those things, he would have failed to establish the that his conduct amounted to detrimental reliance to the alleged promise such as to give rise to an estoppel. The dicta of Hofffman LJ bears repeating: the doctrine "*does not look forward into the future and guess what might happen. It looks backwards from the moment when the promise falls due to be performed and asks whether, in the circumstances which have actually happened, it would be unconscionable for the promise not to be kept."*

75. That means, that if the promise was due to be performed at the death of the testator, the Court's task is to look backwards from the date of death to the conduct of the promisee and ask whether it would be unconscionable not to give effect to the promise.

76. The principle is best illustrated is by the more usual claims of proprietary estoppel brought by persons who have been promised that they will inherit a business or land (often farming) and in reliance on that promise, work for many years in that business or on that farm for low or no wages, to their detriment who after the death of the promisor, have claimed the land business or land on the ground that it would be unconscionable for the promise not to be kept.

77. One such case is *Walton v Walton* 1994] EWCA Civ J0414-1. The claimant son, Alfie, had worked for low pay, long hours for many years on a family farm, owned by his mother. He frequently complained about his low wages, which were lower than that paid to the hired farm worker, and his mother had consistently met those complaints by assuring him that his reward lay in the future: her stock phrase was that '*You can't have more money and a farm one day.*' In 1964 she gave an interview to a local journalist who wrote an article about her in the newspaper. It was called "An amazing widow down on the farm". She told the journalist: "The farm will be Alfie's one day. I want it to be a good farm when he gets it.

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78. At first instance, the Court held that the promises made to the son were never intended to create a legal obligation and dismissed the son's claim.

79. In the House of Lords, Hoffman LJ accepted that *"an intention to bring into existence an immediately binding contract"* is a requirement of a contractual claim and that it would not have been reasonable for the son to believe that his mother had intended to enter into a contract which *'subject to the narrow doctrine of frustration, must be performed come what may'.*

80. The learned Judge held however, that it did not prevent a claim in estoppel for the reason that the principle "*looks backwards from the moment when the promise falls due to be performed."*

81. He cited with approval the decision of *Voyce v Voyce* [1991] 62 P&CR 290, where Nicholls L J had said:

> *"Nor am I persuaded that there was any inconsistency between the judge's conclusion regarding the non-legally binding nature of the arrangements and his conclusion regarding equitable estoppel. The intention to make a gift, coupled with conduct which would make inequitable for Mrs. Voyce to assert continuing legal ownership, may give rise to an estoppel even though initially there was not a legally binding contract."*

82. Lord Hoffman found that the promise had been made. He then found that it was clear the son's decision to continue working for low wages and to make improvements to the land was of such a nature that reliance on the promises could be inferred: there was *'no evidence that his conduct was attributable to any other reason'.* With respect to detriment, Lord Hoffman summarised the son's case in this way:

> *"He cannot have his life over again. If he does not get the farm, he will have to start again at the age of nearly 50, whereas if Mrs. Walton had never promised him the farm, he might by now have established himself in some other way. So it would be unjust, or, in the language of equity, 'unconscionable' for the plaintiff now to be turned off the land."*

83. In *Thorner v Major*, the key point decided in *Walton* was confirmed. The claimant was a farmer who, for nearly 30 years from 1976, did substantial work for very low pay on the farm of his father's cousin, the deceased. The deceased cousin had indicated to the claimant that he would inherit the farm. In 1990, when the deceased was in his early sixties, he handed the claimant a bonus notice, relating to two policies on his life, which had a value of approximately £20,000 between them, and said, *"that's for my death duties*".

84. In 1997, the deceased made a will under which the claimant was to inherit the residue of the estate subject to some legacies. The deceased later revoked his will for reasons unrelated to the claimant but did not make another, and subsequently died intestate. The statutory intestacy rules required that the farm be held on certain statutory trusts for the benefit of other relatives. The claimant brought proceedings in which he alleged that the deceased's estate was bound by conscience, as the deceased was during his life, to give him the farm. His claim was upheld by the first instance court and the judgment restored by the House of Lords.

85. In *Sutcliffe v Lloyd* [2007] EWCA Civ 153 *Walton* was not cited but Wilson LJ formulated the principle in much the same terms, stating that proprietary estoppel does not operate to make A's promise immediately binding. Rather, as the learned Judge stated at para 38:

> *"Equity intervenes to make the promise unable to be revoked (and able to be enforced) <u>not at the time when it is made</u> but only at a significantly later stage, namely in the events both that the promisee should have acted to his detriment in reliance upon it and that <u>the promisor should have sought unconscionably to withdraw from it."</u>* [emphasis mine]

86. The promise-based strand of proprietary estoppel was considered more recently by the Supreme Court in *Guest v Guest*, which concerned a family run farm. The claimant had worked on the farm for over 30 years, living rent-free but receiving a very low wage. His parents had made various assurances to him, which left him with the expectation that he would inherit a significant proportion of the farm on their deaths. Following a breakdown in family relations, the claimant left the farm and was subsequently disinherited entirely. He brought a claim of propriety estoppel against his parents, unusually, while they were still living. The Judge at first instance found in favour of the claimant, finding that clear assurances had been given to him over a significant period of time, which were supported by the terms of earlier Wills and partnership agreements. The reliance and resulting detriment were obvious on the facts given that the son had worked 33 years on the farm in the expectation of the inheritance encouraged by his father.

87. Although the judgment is concerned with the appropriate remedy when the equity has arisen, I cite it to note that the Supreme Court affirmed that the fundamental principle of unconscionability must be considered at the time when the promisor seeks to repudiate the promise at para 37 which, in *Guest's* case, was some 33 years after it had been made.

88. Mr. Cornwall's case is that he built his house on Ms Kathleen's property in 1987, had thereafter contributed to the construction of homes on the land for her children, Goldstein and Charles Leonard and managed the property, keeping it clean and collecting rents because Ms Kathleen had told him repeatedly that she wanted him and his mother to have the property after her death.

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89. The doctrine requires that B relies on a promise of A's *future* conduct and *"looks backwards from the moment when the promise falls due to be performed."*

90. The relevant reliance is what is done from the time the promise is made until the promise falls due to be performed. The conduct and expenditures on which Mr. Cornwall relies were all undertaken after Ms Kathleen had died. As I have set out earlier, drawing from the judgment of Hoffman LJ in *Walton*, proprietary estoppel does not impose duties or liabilities from the moment that the relevant promise is made, but only at a significantly later stage after the promisee has relied on it and the promissor seeks to unconscionably withdraw from it. Put another way, when, on Mr. Cornwall's case, Ms Kathleen said *"the property was for Ann,"* no duty or liability to Ann arose. Liability to make good on the promise would only arise if Ann had relied on the promise to her detriment.

91. The issue of detriment must be judged at the moment the person who has given the assurance seeks to go back on it, per Robert Walker LJ in *Gillet v Holt*. There is no evidence that either Mr. Cornwall or Ann had placed any detrimental reliance on the promise *before* Ms Kathleen passed away which was the point at which the promise fell due to be performed.

92. On any view of the evidence, Mr Cornwall has failed to establish the elements required for an estoppel claim.

93. Although Mr. Cornwall relied on her decision, the Registrar's finding was not that a promise was made that the property would be his but rather, that there was promise that he could remain on the property.

94. She found, in terms, that he was a licensee and had been put into possession of the property with the permission of his great grandmother who had acquiesced to him remaining there. It is not clear how she arrived at that conclusion. The evidence, at its highest, shows only that Mr. Cornwall moved into his great grandmother's house to live with his mother when he was 14 years old, he was still living there when his great grandmother died some 4 years later, after which he simply stayed on. "*Being put in possession of land"* seems to me to have more forensic meaning than allowing your granddaughter's child to live with her in the home that you both share. The term suggests the grant or transfer of an interest in land. There is no evidence to support a finding that Mr. Cornwall's great grandmother did any such thing nor is it Ms. Cornwall's case that she did.

95. The Registrar placed great emphasis on the fact that Mr. Cornwall had remained on the land after his great-grandmother's passing and on the fact that he continued to occupy the

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land with the full knowledge of the family, including Ms Elveda *qua* Adminstratrix who, the Registrar found, had acquiesced in his living there for 20 years.

96. But nothing turns on those facts. It is no different from the fact that, since 1991, James and Jonathan had made their home in their mother's house on the property, or the fact that James improved the property by building a room adjoining his mother's house in which he lived until he did not, at which point he rented it out, or the fact that Mr. Llewellyn has lived there since 2000 and that he too improved the property, building a duplex adjoining Charles Leonard's house. All of them live or have lived there with Mr. Cornwall's knowledge and the knowledge of the other members of the family. None of the previous Administrators appointed by the Court have sought to remove them from the property nor, indeed, has Mr. Cornwall who claims to be the owner in equity of all the land.

97. The claim cannot succeed.

ORDER

98. The Plaintiff's claim is dismissed and judgment entered for the Defendant. Costs follow the event and the Plaintiff shall pay the Defendant's costs on a standard basis, such costs to be taxed if not agreed.

DATED 3 JUNE 2024

The Hon. Justice Margaret Ramsay-Hale
CHIEF JUSTICE