

IN THE CARIBBEAN COURT OF JUSTICE
APPELLATE JURISDICTION

ON APPEAL FROM THE COURT OF APPEAL OF BELIZE

CCJ Application No BZCV2026/002
BZ Civil Appeal No 1 of 2022

BETWEEN

EWART LEROY ROBATEAU

APPELLANT

AND

ALLEN ROBATEAU

RESPONDENT

Before:

Mme Justice Rajnauth-Lee
Mr Justice Barrow
Mr Justice Jamadar
Mme Justice Ononaiwu
Mr Justice Eboe-Osuji

Date of Judgment:

8 October 2026

Appearances

Mr Mathew Morris for the Appellant

Ms Michelle Trapp Zuniga and Ms Emmertice A Anderson for the Respondent

Estoppel — Proprietary estoppel — Promise — Reliance — Detriment — Unconscionability — Whether equity by estoppel established.

Land — Registered land — Overriding interests — Actual occupation — Proprietary interest arising by estoppel — Whether appellant had an overriding interest binding on registered proprietor — Registered Land Act, CAP 194, ss 26, 31.

Evidence — Evaluation of evidence — Uncontradicted evidence — Failure to consider material evidence — Rejection of witness testimony — Requirement to give adequate reasons.

SUMMARY

This is an appeal which concerned a land dispute between two brothers, Ewart Robateau ('Appellant') and Allen Robateau ('Respondent'), over a house that was constructed by the Appellant on vacant land in Belize City. The question before the Court was whether the Appellant had acquired an equitable interest in the property that was originally leased to his mother. This land was leased by the Government of Belize in the early 1990s, on the condition that it must be developed in order for the lessee to gain freehold title. The Appellant claimed that his mother promised him that if he constructed a house on the empty lot, he could live there for life. This arrangement was told to the other siblings. Relying on this assurance by his mother, the Appellant subsequently constructed a house where he raised his family and continued to occupy for 34 years.

In 2017, the mother transferred title to the property to the Respondent who became the registered owner and sought to evict the Appellant from the premises. A claim was instituted at the High Court by the Respondent to recover possession from the Appellant who resisted the claim by reliance on the arrangement with his mother. This defence was rejected principally because the trial court considered that he had failed to provide corroborative evidence of the alleged promise or financial receipts relating to his construction of the house. Further, the trial judge did not regard him as a credible witness. The Court of Appeal upheld that decision which had concluded that the Appellant was a mere licensee of the property.

The Caribbean Court of Justice (hereafter 'the CCJ' or 'the Court') allowed the appeal, finding that both lower courts had materially erred in their evaluation of the evidence and were plainly wrong. Barrow J emphasised the distinction between evidence which is contradicted and evidence which is merely disputed. The Appellant's evidence that he built and paid for the house was essentially uncontradicted. The Respondent himself could not contradict the Appellant's assertions and admitted that he did not know whether their mother had promised the Appellant a life interest. More importantly, another brother who gave direct evidence, Mr Ernesto Castillo, stated that their mother told all the children the Appellant would receive a life interest in the property. The trial judge had completely failed

to consider this evidence and had incorrectly concluded that there was nothing supporting the Appellant's account of events. The CCJ held that the absence of receipts, invoices or other financial documentation did not undermine the uncontradicted fact that the Appellant had built and paid for the house. His decades-long open occupation, coupled with the circumstances in which the house was constructed, provided substantial objective evidence supporting his account of the arrangement with his mother.

The opinion concluded that the requirements of proprietary estoppel were satisfied. There was an assurance or promise of a life interest; the Appellant relied upon that promise by investing his own money and labour in constructing the house; and he suffered detriment because, absent equitable intervention, he would lose the benefit for which he had undertaken that expenditure. It would therefore be unconscionable to permit the Respondent, who had acquired title with knowledge of the Appellant's long-standing occupation and claim, to eject him. The opinion further explained that an interest arising from a promise can, where the claimant is in actual occupation, constitute an overriding proprietary interest protected under s 31(1)(g) of the Registered Land Act.

Jamadar J discussed the need by lower courts to employ a robust fact-finding methodology in determining such matters as arose in this case. He emphasised that trial judges should evaluate witness testimony against the pleadings, contemporaneous documents, objectively established facts, admissions, and the inherent probabilities of the competing cases. Unchallenged evidence will ordinarily carry significant weight, although it may be rejected where it is inherently incredible or contradicted by reliable evidence. If it is rejected, adequate reasons must be given. The opinion also reaffirmed that an appellate court may intervene where a factual finding is plainly or clearly wrong, including where there is an inadequate evidential basis, unsatisfactory reasoning, or a miscarriage of justice.

On the question of relief, the Court noted that proprietary estoppel gives the court a flexible equitable jurisdiction to fashion a remedy sufficient to satisfy the equity. Relevant considerations include the claimant's reasonable expectation, the extent of his detriment, proportionality between expectation and detriment, and, ultimately, what is necessary to

avoid unconscionability and achieve a just result. The appeal was therefore allowed; the High Court decision was reversed, the order for possession was set aside, the life interest of the Appellant was affirmed, and the Appellant was awarded his costs in the CCJ and the courts below.

Cases referred to:

A-G v Samlal [1987] 38 WIR 382 (TT PC); *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB; *Browne v Dunn* (1893) 6 R 67; *Dass v Marchand* [2012] 1 WLR 1788 (TT PC); *Devi v Roy* [1946] AC 508; *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm); *Guest v Guest* [2024] AC 833; *Jennings v Rice* [2002] EWCA Civ 159; *Jones v Stephenson* BZ 2018 CA 9 (CARILAW), (22 June 2018); *Lachana v Arjune* [2008] CCJ 12 (AJ) (GY); *Mc Laren v Dickey* TT 2009 HC 123 (CARILAW), (5 June 2009); *Onassis v Vergottis* [1968] 2 Lloyd's Rep 403; *Persaud v Mongroo* [2023] CCJ 16 (AJ) GY, (2023) 105 WIR 348; *Ramdehol v Ramdehol* [2017] CCJ 14 (AJ) (GY); *Ramlagan v Singh* [2014] CCJ 5 (AJ) (GY), GY 2014 CCJ 2 (CARILAW); *Reid v Charles* [1989] UKPC 24 (TT); *Robateau v Robateau* (BZ CA, 29 August 2025); *Robateau v Robateau* BZ 2022 SC 4 (CARILAW), (14 February 2022); *Selgado v Broaster* (2023) 103 WIR 142; *Thomas v Clydesdale Bank plc* [2010] EWHC 2755 (QB); *Thorner v Major* [2009] 3 All ER 945; *Walsh v Ward* [2015] CCJ 14 (AJ) (BB), (2015) 87 WIR 101; *Ward v Walsh* BB 2012 CA 14 (CARILAW), (28 November 2012); *Williams & Glyn's Bank Ltd v Boland* [1981] AC 487.

Legislation referred to:

Belize - Evidence Act, CAP 95, Registered Land Act, CAP 194, Senior Courts (Civil Procedure) Rules 2025; **United Kingdom** - Land Registration Act 1925, Land Registration Act 2002.

Other Sources referred to:

Kodilinye G, *Commonwealth Caribbean Property Law* (5th edn, Routledge 2022); Lady Rose of Colmworth, 'The Art and Science of Judicial Fact Finding' (Canadian Institute for Advanced Legal Studies, The Cambridge Lectures, Queens' College, Cambridge, 14 July 2023); Statistical Institute of Belize '1990-1991 Population and Housing Census of the Commonwealth Caribbean: National Census Report, Belize' (1991).

JUDGMENT

Reasons for Judgment:

Barrow J [1] – [30]

Jamadar J [31] – [71]

Disposition [72]

BARROW J:

[1] The Appellant, Ewart Robateau, continues to seek on this appeal a determination that he has a life interest in the house he built on his mother's land and which he has occupied for over three decades. He maintains that his brother, Allen Robateau, the Respondent, who obtained title in 2017 from the now deceased mother, was not entitled to eject him as a bare licensee.

Quality of Evidence

[2] It is a simple issue to decide: did the trial judge and the Court of Appeal err in rejecting the evidence that Ewart built the house on his mother's land in reliance on his mother's promise to him that if he did so he could live there for life? The trial judge decided¹ that beyond making bare assertions, Ewart did not 'provide the court with the needed evidence' to substantiate his claim. The judge stated this was his evidentiary burden to discharge, and he failed to do so. The Court of Appeal accepted that decision.

[3] The case was decided based on that singular finding of fact. That finding is challenged as erroneous and the judgments, therefore, must be examined to understand the reasoning that produced that finding. In this examination, a

¹ *Robateau v Robateau* BZ 2022 SC 4 (CARILAW), (14 February 2022) at [32].

distinction will be seen between contradicted evidence and disputed evidence. Evidence is said to be *contradicted* where a witness has said something and someone else has asserted the opposite of what was said. In contrast, evidence is said to be *disputed* where a witness has said something and what was said is challenged or not accepted but there is no testimony to the contrary.

- [4] Ewart's evidence as to the grant of a life interest was entirely uncontradicted: there was no evidence to the contrary. It is a different thing that Allen did not accept what Ewart said as being the fact. The trial judge made her decision on the basis that she did not find Ewart 'to be a credible witness'. Rather than weighing the evidence to see what weight to give to what testimony or reflecting on the performance of witnesses on the witness stand, or considering the inherent credibility of what they said, the trial judge distinctly (and, perhaps, singularly) based her decision to reject Ewart's testimony on the absence of needed and vital and corroborative² evidence. That course opened the decision of the lower courts to being reversed on the ground that both the trial judge and the Court of Appeal got it plainly wrong in finding there was no supporting evidence and in failing to have regard to the objective evidence before the court.

Occupation

- [5] Sometime before 1992, Mrs Anita Robateau, the mother of these two brothers (and other siblings), obtained on lease from the Government of Belize a parcel of land, 1830 Chancellor Avenue, West Landivar in Belize City. As a matter of general knowledge, of which I take judicial notice in reviewing the evidence in this appeal, around the time of this lease, the Government had recently reclaimed the area of land where the parcel was located. Belize City lies below sea level, as geographers tell it, and over the decades successive governments increased the quantity of available land by reclaiming swamp lands by dredging and piping in sand from the adjacent sea.

² *ibid* at [27], [32], [39].

- [6] The Government gave out leases of parcels into which the reclaimed land was subdivided to applicants at a nominal price on condition that the lessee must develop the land whereupon they would be granted freehold title. Failure to develop within a stipulated period could result in forfeiture. As would be expected, there was much jostling for allotments as the number of applicants for leases far exceeded the availability. Competition and machinations abounded and there were eager watchers waiting and pressing for lots to be forfeited and become available.
- [7] Mrs Robateau's lot was subject to such forfeiture. She and her adult children lived in California. In small town Belize City, with a population at the time of approximately forty thousand³ where, in the argot 'everybody know everybody,' her absentee status and economic circumstances would have been known to watchers. She was doubtless conscious of her vulnerability. This general knowledge of Belize City and the realities of holding on to leaseholds give credibility to a story, such as told by Ewart, that a mother would induce a son to build on her leasehold land. It is an easy inference, in this case, that rather than continuing to live under threat of forfeiture for non-development the mother would have chosen to outrightly give the land to one of her children. Ewart testified that he was the son, recently returned to Belize from living abroad and in sound employment, who accepted the mother's inducement to build the house which stands on the property in reliance on her promise that he could live in it for life.
- [8] Ewart's testimony of his building the house in reliance on the promise made to him is the bedrock of his claim. It is of overwhelming significance that his evidence was not contradicted. There was simply no evidence to the contrary. This reality is crystallised in the following passage from the High Court judgment:⁴

28. For his part, the Claimant [Allen] says that a house was on the property, but that he did not know "who put it there". He also admitted that he did not know when it was that Ewart started to live

³ Statistical Institute of Belize, '1990-1991 Population and Housing Census of the Commonwealth Caribbean: National Census Report, Belize' (1991).

⁴ *Robateau v Robateau* BZ 2022 SC 4 (CARILAW), (14 February 2022) at [28] (emphasis added).

there but said that he did know that when the house was built it was rented out ... and said that Ewart started to live there some time afterwards with his wife and children. The evidence of Allen was that as long as Ewart was living there, “he would take care of everything”. The Claimant admitted under cross examination that *he did not know if his mother had told Ewart to build a house on the property and that he could live there for his life*. He says that the only person who told him that was Ewart.

- [9] That account shows that Allen implicitly accepted that Ewart built the house although he had said in his witness statement that it was the mother who built the house. In cross-examination, he conceded that he could not contradict Ewart’s evidence that Ewart built the house. Upon the whole of the evidence, there was no credible evidence that anyone else may have built the house or paid for it. It did not matter if in building the house Ewart spent BZD100,000 and a further BZD17,000 as he testified or what the figure was. Those figures are mentioned in this judgment only to give a sense of what may have been the cost in the early 1990s to build a house of sufficient size to house Ewart, his attorney-at-law wife, three children and sometimes his mother. It is the fact that Ewart built the house and paid to build it.
- [10] It may be mentioned also that the trial judge was much taken with the complete failure of Ewart to produce a single receipt or invoice or financial document to corroborate his testimony as to the building of the house. The judge also noted the failure to produce the Land Register to prove, as Ewart claimed, that the property had been mortgaged to secure the loan to fund construction. On reviewing the evidence, it is readily appreciated that the absence of documentation relating to payment for the construction of the house was utterly immaterial. That absence was incapable of creating any doubt that the house was built or that Ewart built it.
- [11] In short, the irrebuttable fact was that Ewart built the house in which he has been living since 1992 or thereabouts and that he spent however many tens of thousands of dollars it took to do so. The trial judge’s failure to articulate or express that as a finding of fact marks her failure to appreciate that that was the fact. This resulted in the further failure of the trial judge to reason from that fact to consider what were

the implications and conclusions that necessarily flowed from it. As Jamadar J expressed it to counsel during argument, the finding of fact that Ewart built the house and paid for it provided the framework for the trial judge to have considered the implications and conclusions that necessarily flowed from it. I respectfully commend the opinion of my brother in which he presented a structured treatment of the methodology for considering the evidence that judges should follow and which would have avoided the errors that flawed the judgments in the courts below.

The Promise

- [12] It was common ground that Ewart had been openly in occupation of the house and land and openly claimed to have the right to be there, for life. The testimony of another brother, Ernesto Castillo, confirmed Ewart's claim to a life interest. Indeed, Allen Robateau himself testified that it was Ewart's claim that he had a life interest in the property. Allen admitted he did not know if his mother had told Ewart to build and he would have a life interest. Ewart's assertion of a life interest evidences his state of mind in relation to his occupation of the property. He occupied as of right – as a tenant for life and not by bare permission or at anyone else's pleasure or licence. His open occupation was adverse to any potential claim by anyone else for possession.
- [13] That open occupation as of right served further to corroborate Ewart's claim of the promise made to him by his mother of a life interest. That occupation was uncontradicted, undisputed and, as testified by Ernesto, it was accepted by everyone that Ewart went into occupation pursuant to an arrangement with the mother. The undisputed evidence is that the mother gave him the right to occupy; at times, she lived in the house with Ewart and his family. In assessing probabilities, it was a total improbability that Ewart would have agreed with the mother that he (Ewart) would build a house, but he would have no right to it, and he could be ejected from it at any time upon a whim.

- [14] A major error of the courts below was the failure to consider that such a conclusion simply could not make sense. Absent some extraordinary evidence to the contrary, with respect, the conclusion was irrational.

Burden of Proof

- [15] The trial judge decided the case on the basis that Ewart had failed to discharge the burden of proof that laid upon him to prove his claim of a life interest. After rehearsing Ewart's failure to produce financial and land registry documentation, the judge concluded:⁵

In short, the Defendant did not, beyond making bare assertions in his witness statement and in cross examination provide the court with the *needed evidence* to substantiate what was set out in his Defence regarding the house and his purported interest in the same. This was his evidentiary burden to discharge. He failed to do so.

- [16] The degree to which the trial judge based her decision on the absence of corroborative evidence appears again in the course of arriving at her decision that Ewart was a bare licensee. The judge stated:⁶

There is no *evidence to support* the contention of Ewart Robateau that he had an equitable interest in the property save and except for the fact that he had lived there for a number of years. Furthermore, I did not find him to be a credible witness.

- [17] The analysis of the evidence at [3] to [6] above brings home exactly where the trial judge went wrong. It was Ewart's uncontradicted evidence that, with his mother's agreement, Ewart paid to build the house on his mother's land that he has been occupying now for over 30 years. While it was disputed, there was no contradicting that the life interest was promised to him. Allen's testimony established that Allen could not assert the negative – he could not assert that the mother did not make the promise to Ewart. Conclusively, it was not open to the judge to not believe Ewart as to the promise made to him by basing that disbelief on the ground that there was

⁵ *ibid* at [32] (emphasis added).

⁶ *ibid* at [36] (emphasis added).

no supporting testimony because it was an error in law to require supporting testimony, as shown in *Thorner v Major*.⁷ In that case, the promise was never spoken and there was no witness to its making but the House of Lords decided that the promise could be proved by conduct. In the instant appeal, the error is more egregious because there was the clearest possible supporting testimony on the record.

Supporting Evidence

[18] In Ernesto's witness statement, which stood as his evidence in chief, after giving background information about Ewart's building on the mother's land, Ernesto stated:

9. My mother kept all of us her children informed of what she was doing and from the start made it clear to us that she was asking Ewart to build his house on her land and that she had promised him that as soon as she became the full owner of the property he would get a life interest to live on the property and occupy the house as he pleased for his entire life in the meantime, she would allow him to live in the completed house, just as if he were a life tenant and she was full owner.
10. This was told by my mother to all of us including my brother Allen
11. We all agreed that this was what we all wanted and were satisfied with.

[19] At [26] of the High Court judgment, the judge purported to summarise Ernesto's evidence and found him to be '... an unhelpful witness and unable to confirm any details regarding a promise by Anita to Ewart, or any agreement between them.' The trial judge paid absolutely no attention to Ernesto's direct evidence as to the promise and arrangement as contained in paras 9, 10 and 11 of his witness statement reproduced immediately above. Not once did the judge mention the statements or their substance. The judge's decision at [36] of the judgment, reproduced at [16] above, that there was no evidence that supported Ewart's testimony as to the

⁷ [2009] 3 All ER 945.

promise made to him was, therefore, completely erroneous or, as otherwise stated, plainly wrong.

[20] The Court of Appeal seemed to have been at least conscious that Ernesto spoke to the promise when the court said at [11] of their judgment that Ernesto was brought as a witness to establish the existence of the promise but that he did not know details about the property ‘except for what his brother Ewart and *his mom Mrs. Anita had told him.*’⁸ Regrettably, the court concluded that Ernesto did not know about the promise. It did so by citing the testimony of Ernesto (Transcript, p 189, lines 16–17) under cross-examination, as showing such ignorance. With respect, this was an egregious transmuting of Ernesto’s testimony of ignorance about the loan and land documents to testimony that Ernesto was ignorant about the promise. Not once in the passage referenced by the Court of Appeal was there mention of the promise. The promise was not the subject matter of the testimony. Simply put, the Court of Appeal utterly misled itself. It, too, failed to advert to Ernesto’s testimony in his witness statement (reproduced at [18] above), that the mother told all the children about the promise, including Allen. That testimony was never impugned.

Interfering with Findings of Fact

[21] The Court of Appeal concluded its review of the evidence⁹ by upholding the decision of the trial judge, ‘in light of the dearth of evidence presented at trial on behalf of the Appellant [Ewart].’ The court founded its decision on the well-known statement of principle that an appellate court:¹⁰

... will not lightly interfere with the findings of fact of a trial judge unless it is plain that he/she made a material error in the evaluation of the evidence or is plainly wrong; *Stephanie Jones v Jessie Stephenson* (Civil Appeal No. 21 of 2016 at paragraphs 11-13 and Foster JA in *Selgado v Broaster* 102 W.I.R. 142 at paras 15 to 18.

⁸ *Robateau v Robateau* (BZ CA, 29 August 2025) at [11] (emphasis added).

⁹ *ibid* at [12].

¹⁰ *ibid* at [13].

Regrettably, the Court of Appeal failed to appreciate that they had before them precisely a case where the lower court ‘made a material error in the evaluation of the evidence’ and was ‘plainly wrong’.

[22] The material error in the evaluation of the evidence has been detailed above and is now summarised. As Ernesto testified, it was a well-known fact to the family that Ewart and the mother agreed that he would build a dwelling house on her land and would live in it for life. Ewart testified that the arrangement was for him to have a life interest in the house and land. He was not contradicted. The trial judge made no evaluation of what the arrangement between mother and son could have been if it was not as Ewart testified. She made no evaluation of why the court could and should hold that there was an arrangement other than as testified by Ewart. Worse than an erroneous evaluation, this was a failure to evaluate.

[23] Instead of evaluating the evidence, the trial judge wrongly persuaded herself that because there was no evidence to support Ewart’s testimony – which was plainly wrong – he should not be believed. That determination was not an evaluation; it was a finding as to the existence or non-existence of evidence. It was an erroneous finding because the uncontradicted facts that Ewart built a house on his mother’s land at his cost and was permitted to live there for decades amounted to strong evidence from which to infer and conclude that Ewart acted in reliance on the mother’s promise, as he testified. The erroneous finding that there was no supporting evidence inevitably resulted in a failure to evaluate the objective evidence that existed.

[24] The second limb of the conditions that must exist to permit an appellate court to interfere with a lower court’s findings of fact is where the court got it plainly wrong in finding a fact. This also was fully made out, as detailed above. It was plainly wrong for the trial judge to direct herself that Ernesto’s testimony was unhelpful as to the making of the promise by the mother. The judge simply failed to advert to

the existence of this testimony and the cogent proof that it provided of the promise to Ewart by the mother of a life interest.

Equitable Remedies

[25] Ewart resisted Allen's claim to possession by saying that he relied on the promise to him of a life interest made by the mother which gave rise to the doctrine of proprietary estoppel. Under that doctrine the mother was, and in turn Allen is, bound by the promise the mother made, and the courts will stop a promisor from acting contrary to a promise they made. In this case, Allen took a voluntary transfer of title with full knowledge of Ewart's decades of occupation and claim to a life interest and therefore, is estopped from denying that Ewart had acquired a beneficial interest in parcel 1830 Chancellor Avenue. Ewart has satisfied the doctrine's requirement for a claimant to establish that a promise or assurance was made to them, that the claimant relied on it and that the claimant did so to their detriment; see *Thorner v Major*.¹¹

[26] In the instant case, it was treated by the High Court¹² as axiomatic that Ewart would have obtained the relief he claimed if he had proved that at the request or with the encouragement of his mother, he had spent money improving the property in the expectation created by his mother that he would be allowed to occupy it and on what terms and for how long. The court recognised that if Ewart had in fact established these requirements in his evidence 'then no court would allow his expectation to be defeated where it would be inequitable to do so.' The High Court stated, where a party before the court is able to prove that under an expectation, created or encouraged by an owner of land or property, that he shall have a certain interest in that land or property, and the party takes possession of the land or property with the consent of the owner or landlord; and 'acts on the basis of such promise or expectation, with the knowledge of the owner and expends money upon

¹¹ [2009] 3 All ER 945 at [15].

¹² *Robateau v Robateau* BZ 2022 SC 4 (CARILAW), (14 February 2022) at [38].

the land or property, a court of equity will compel the owner to give effect to such promise or expectation.’

[27] As I have concluded, Ewart fully proved the making of the promise to him of a life interest in the property. He fully proved that he spent thousands of dollars in building a family residence on the property, which satisfied the requirement of acting in reliance on the promise. Ewart, having so acted, did so to his detriment because he spent his own money and efforts in improving the value of his promisor’s land and, without the intervention of equity, he will be ejected therefrom in denial of the life interest in expectation of which he acted. As the High Court recognised, even if only hypothetically, Ewart is protected by the doctrine of proprietary estoppel from ejectment.

[28] It may be mentioned that the doctrine of constructive trust¹³ may also be invoked in this situation and, as well, the legal principle of overriding interest, recognised in s 31 of the Registered Land Act.¹⁴ However, in my view, as a matter of caution, it is better to refrain from discussing these concepts in light of the consideration that there was no claim before the CCJ by the estate or a relevant party regarding the integrity of Allen’s land title. The High Court had rejected Ewart’s defence that Allen had obtained title by exercise of undue influence over the mother.

[29] When the claim for possession was heard in the High Court on 26 October 2021, the trial judge decided upon seeing the 93-year-old mother¹⁵ who was brought to court to give evidence for Ewart, that she was not of a mental state to give evidence. The judge described her as distraught and confused, as not understanding what was happening, as unable to take the oath and decided that she could not give evidence.¹⁶ It was, therefore, interesting to see the judge, in considering Ewart’s

¹³ *Thorne v Major* [2009] 3 All ER 945 at [14] (Lord Scott).

¹⁴ CAP 194.

¹⁵ See Record of Appeal, ‘Witness Statement of Anita Robateau’ 545, for evidence of her age. It is acknowledged that the trial judge treated this witness statement as not forming part of the evidence; *Robateau v Robateau* BZ 2022 SC 4 (CARILAW), (14 February 2022) at [25].

¹⁶ *Robateau v Robateau* BZ 2022 SC 4 (CARILAW), (14 February 2022) at [25].

claim that the mother had not freely transferred title to Allen in 2017, refer to the judge's own determination of the mental capacity of the mother and to evidence from Allen himself that the mother had spent some time in a psychiatric institution. However, the judge reasoned to the conclusion that Ewart's claim (and Ernesto's evidence in support) as to the mother's incapacity must fail because of a want of direct evidence of incapacity or undue influence and the lack of medical or documentary evidence in support.

- [30] With the reversal of the High Court judgment, as I would order, that decision would no longer stand. While careful not to be suggesting future action, the possibility of such action, including a challenge to title on ground of undue influence, must be recognised and, therefore, it is right to limit the ambit of my opinion. I would decide the appeal on the simple basis that it would be unconscionable for Allen to be permitted to eject Ewart.

JAMADAR J:

- [31] I agree with the factual analysis undertaken by Barrow J and his conclusions. I therefore agree that this appeal should be allowed with costs. Both the trial court and the Court of Appeal did not properly take into account relevant considerations of fact and law and failed to appropriately avail themselves of the opportunities afforded them in relation to the forensic fact-finding exercise that was required on the evidence and in the circumstances of this case.
- [32] In my opinion, one deficit that contributed to the failures averred was the lack of any stated articulation and application of a coherent and robust fact-finding methodology. Such an articulation and application can help even the most

experienced judicial officers avoid gaps in analysis and is recommended, as has been done in the Caribbean.¹⁷

A Fact-finding Methodology

[33] Such a fact-finding methodology, taken from the established precedents,¹⁸ forensic science,¹⁹ and grounded in tried and tested experience, looks something like this in civil proceedings. Begin with the pleaded cases and ascertain the competing pleaded cases, issues, and the facts that are admitted and denied.²⁰ Then identify (admissible) contemporaneous documentary evidence, and other forms of contemporaneous evidence. Evaluations will need to be made on objectivity, relevance, weight and credibility. Compare oral evidence (witness testimony) with the pleaded cases, admitted facts, objective facts, relevant and reliable contemporaneous evidence (where that exists), and the inherent or likely (contextual) probabilities of the competing contentions. Demeanour is a consideration but should generally be treated as inherently unreliable as a basis for fact-finding.²¹

[34] This approach is evidence-based, scientifically grounded and holistic, with permissible flexibility to accommodate every variety of circumstance that may arise in a fact-finding exercise. On the matter of admissions, and given its relevance in this matter, a distinction must be made between admissions on pleadings and during a hearing. Apart from express admissions,²² material facts may be deemed to be admitted if they are not denied or put to proof.²³ The use of witness statements also

¹⁷ See *Mc Laren v Dickey* TT 2009 HC 123 (CARILAW), (5 June 2009) at [12]–[15] (Rajnauth-Lee J), where the judge identifies and sets out the applicable methodology for fact-finding.

¹⁸ Discussed below.

¹⁹ See Lady Rose of Colmworth, ‘The Art and Science of Judicial Fact-Finding’ (Canadian Institute for Advanced Legal Studies, Queens’ College, Cambridge, 14 July 2023). And see *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [354]–[357], [360]–[361], [368]–[369].

²⁰ Senior Courts (Civil Procedure) Rules 2025, r 8.7 (statement of case, duty to set out all facts relied on) and r 8.8 (consequences); and r 10.5 (defence, duty to set out all facts relied on, and obligations with respect to facts in a statement of case to admit, deny, declare lack of knowledge, and/or put to proof) and r 10.7 (consequences).

²¹ See *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [361].

²² Senior Courts (Civil Procedure) Rules 2025, pt 14; and note, more generally, r 14.1(1) expressly states: ‘A party may admit the truth of the whole or any part of any other party’s case.’

²³ Section 8 of the Evidence Act, CAP 95 states: ‘8. No fact need be proved in any civil cause or matter which the parties thereto or their agents admit at the hearing, or which they have admitted before the hearing with reference thereto, by their pleadings, express admissions, in answer to interrogatories, agreement between the parties or on notice to admit facts.’

affords opportunities for a forensic analysis of admissions.²⁴ And given the entitlement to cross-examine on a witness statement (which is customarily treated as akin to oral evidence in chief),²⁵ the implications for proof of a case follow the usual rules of evidence (see below).

- [35] The general rule is that i) material facts that are not specifically denied in pleadings, are ordinarily deemed admitted and need not be proven beyond their assertion, and ii) during a hearing, evidence that is not specifically challenged in cross-examination or contradicted by other cogent evidence (‘or disputed only as an afterthought or otherwise in a very unsatisfactory manner’²⁶) strongly supports an inference that the evidence is accepted or not genuinely disputed.²⁷ In the latter circumstance, the evidence is therefore not necessarily admitted. A factfinder can reject even unchallenged evidence if it is inherently incredible, inconsistent with undisputed documents, contradicted by established or mutually agreed facts, or overwhelmingly and plainly unreliable. Thus, one may say that unchallenged *viva voce* evidence is usually, but not necessarily, accepted as effectively established. But if it is rejected, demonstrably good reasons must be given for doing so.
- [36] Moreover, a factfinder must also be acutely aware of applying the evidentiary rules governing burdens of proof and standards of proof. In relation to the former, the general principle in civil matters is well known: ‘whoever asserts must prove.’ It is an ancient common-law principle encapsulated in the Latin maxim: ‘*ei incumbit probatio qui dicit, non qui negat*.’²⁸ What this means is that the legal (or persuasive) burden of proof normally lies on the party asserting the affirmative of an issue. In

²⁴ Senior Courts (Civil Procedure) Rules 2025, r 29.13 ‘Notice to admit facts.’

²⁵ Senior Courts (Civil Procedure) Rules 2025, r 29.10 ‘Cross-examination on witness statement.’

²⁶ *Reid v Charles* [1989] UKPC 24 (TT) at 6 (Lord Ackner).

²⁷ The rule in *Browne v Dunn* (1893) 6 R 67 (Lord Herschell): when it is intended to suggest that a witness is not telling the truth on a material point, the witness's attention should be drawn to that allegation in cross-examination, so they have an opportunity to explain it. Thus, if cross-examining counsel intends to argue that a witness is mistaken, unreliable, or untruthful on an important point, that challenge should be put directly to the witness while they are giving evidence. In Lord Herschell's words (at 70): ‘Now, my Lords, I cannot help saying that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made ...’.

²⁸ ‘The burden of proof lies upon him who asserts, not upon him who denies.’ This can be traced back to Roman Law as codified in the Digest of Justinian, at 22.3.2 (originally written by the 2nd-century Roman jurist Paul (Paulus) in Book 69 of his *On the Edict*, and from there officially incorporated into Emperor Justinian's *Corpus Juris Civilis* in 533 AD) and was from that source absorbed into the English common-law of evidence.

relation to the latter, the general principle is equally well known: a fact is proved on the balance of probabilities if the fact-finder is satisfied that, on the available and admissible evidence, *it is more likely than not* that the fact occurred.²⁹ Thus, if there is any doubt or dispute whether a fact happened or it did not, that doubt or dispute is to be resolved by the applicable standard of proof.

- [37] Trial judges are therefore expected in their reasoning to demonstrably evaluate and test oral testimony against contemporaneous documents, objectively established facts, the pleaded cases and issues, and the inherent probabilities of rival contentions (bearing in mind any admissions) – all taken in the context of applicable burdens and standards of proof, before making final findings of fact.³⁰ This approach provides a consistent, clear, and coherent method and amounts to best practice guidelines for judicial fact-finding. It also facilitates transparency and accountability in the reasoning process and an effective appellate review.³¹

Jurisprudence

Support for a Methodology

- [38] In *Mc Laren v Dickey*,³² Rajnauth-Lee J, while sitting as a trial judge in the High Court of Trinidad and Tobago, had to determine a matter in which ‘the sole issue before the Court is a question of fact.’³³ She was careful to identify and outline, and then to apply, the court’s approach. Citing *Reid v Charles*³⁴ and *Attorney General*

²⁹ *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [327]: ‘the usual civil standard of proof (a balance of probabilities) is satisfied in favour of a party that can tilt the scales of justice to a degree of more than 50% (it is “more probable than not that an event had occurred”).’

³⁰ As Lord Ackner put it in *Reid v Charles* [1989] UKPC 24 (TT) at 6: ‘... where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.’

³¹ *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [411]; ‘... the discharge of such an obligation by way of reasoned explanation forms a rational and reviewable basis for the intervention of appellate courts.’

³² TT 2009 HC 123 (CARILAW), (5 June 2009).

³³ *ibid* at [11].

³⁴ [1989] UKPC 24 (TT).

of *Trinidad and Tobago v Samlal*,³⁵ she would state the appropriate approach at [13]:³⁶

Accordingly, the trial judge must check the impression that the evidence of the witnesses makes upon him against:

- i) contemporary documents, where they exist;
- ii) the pleaded case; and
- iii) the inherent probability or improbability of the rival contentions.

[39] In *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd*,³⁷ this Court authoritatively explored this matter in the context of concurrent findings of fact.³⁸ The discussion was framed through constitutional lenses, as follows:³⁹

The constitutional standard of an entitlement, a guarantee, of a fair trial, is not a promise of infallibility. In an inherently human system, which judging is, fairness does not equate to perfection. *Its guarantee resides in process.* That is, fact finders are expected to know and apply a robust and measurable (hence evaluative) forensic process in relation to findings of primary facts, credibility, and inferences.

[40] Citing extracts from *Onassis v Vergottis*,⁴⁰ *Reid v Charles*,⁴¹ and *Gestmin SGPS SA v Credit Suisse (UK) Ltd*,⁴² this Court would explain that the corpus of relevant precedents⁴³ demonstrate: ‘a consistent, clear, and coherent method, an outline of best practice guidelines, for fact finding that seeks to overcome the shortcomings of demeanour assessments.’⁴⁴ What would that be?

³⁵ (1987) 38 WIR 382 (TT PC) at 387.

³⁶ *Mc Laren v Dickey* TT 2009 HC 123 (CARILAW), (5 June 2009).

³⁷ [2024] CCJ 3 (AJ) BB.

³⁸ *ibid* at [318].

³⁹ *ibid* at [398] (emphasis added).

⁴⁰ [1968] 2 Lloyd’s Rep 403 at 431 (Lord Pearce).

⁴¹ [1989] UKPC 24 (TT).

⁴² [2013] EWHC 3560 (Comm) at [16]–[20], [22].

⁴³ See *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [400]–[403].

⁴⁴ *ibid* at [404].

In this Court's opinion:⁴⁵

... the following practical guidelines can be articulated. Demeanour assessments of credibility and/or fact-finding ought to engage a process of checking impressions against: (i) any relevant contemporary documents, (ii) the pleaded case, (iii) the inherent probability or improbability of the rival contentions, (iv) facts and matters which are common ground or unchallenged, and (v) facts and matters disputed only as an afterthought or otherwise in a very unsatisfactory manner.

[41] Indeed, this Court, consistent with Rajnauth-Lee J in *Mc Laren v Dickey*, would propose the use of the above methods as 'clear, yet sufficiently flexible guidelines.'⁴⁶ And would advise:⁴⁷ 'Best practice is, it is therefore suggested, at a minimum and as a baseline, for trial judges to base factual findings on inferences drawn from the documentary evidence and known or probable facts, before relying on witness recollection of events wherever possible.'

Social Context Matter

[42] And further, recognising the critical role of social contexts in factual analyses, this Court would also advise (referencing, among other things, procedural fairness standards,⁴⁸ gender sensitivity,⁴⁹ and accommodations for persons with disabilities).⁵⁰ In addition to these purely evaluative evidential considerations, it is also suggested that *primary fact finders need to be more holistically aware of and sensitive to prevailing socio-legal cultures, systems, and other discriminating considerations that can adversely affect certain groups in Caribbean society*, and how these may impact the exercise of credibility assessment and fact finding.⁵¹

⁴⁵ *ibid.*

⁴⁶ *ibid* at [400].

⁴⁷ *ibid* at [406].

⁴⁸ *ibid* at [408].

⁴⁹ *ibid* at [409].

⁵⁰ *ibid.*

⁵¹ *ibid* at [408] (emphasis added).

Concurrent Findings of Fact

[43] In this appeal, the Court of Appeal seemed to agree with the trial judge’s core findings of fact – or so it may appear on an uncritical reading of the Court of Appeal’s judgment.⁵² How then is this appeal to be dealt with given what is often termed ‘the special appellate deference rule’?⁵³

[44] In 2023, in *Persaud v Mongroo*,⁵⁴ this Court specifically considered the role of an appellate court in reviewing inferences (as compared to findings of primary facts). This distinction is important in this appeal, because so much turns on inferential findings by the trial judge and the Court of Appeal. Rajnauth-Lee J, writing for the Court, confirmed the continuing relevance of the appellate deference rule.⁵⁵ She also explained that ‘the importance of the distinction between findings of primary facts and inferences drawn from the findings of primary facts cannot be overlooked.’⁵⁶ In this regard, this Court asserted ‘... that an appellate court should exercise cautious reluctance before it reviews findings of fact which are based on assessments of the credibility of witnesses, but that *it is in as good a position as the trial judge when it comes to drawing inferences which involve evaluating evidence.*’⁵⁷

[45] Subsequently, in 2024, in *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd*, this Court was again called upon to review its jurisprudence on concurrent findings of primary facts and inferences. It undertook a comprehensive review of its jurisprudence. In doing so, it confirmed what it had stated in *Persaud v Mongroo*.

⁵² See *Robateau v Robateau* (BZ CA, 29 August 2025) at [9]–[13], [19], [28].

⁵³ *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* at [236], [237] (Burgess J).

⁵⁴ [2023] CCJ 16 (AJ) GY, (2023) 105 WIR 348.

⁵⁵ *ibid* at [36]: ‘It follows that where the trial judge has properly utilised the distinct advantage of having seen and heard the witnesses, has adequately evaluated the witnesses, and weighed the facts and circumstances of the case, an appellate court ought not to lightly reverse findings of credibility arrived at by the trial judge. Moreover, where the trial judge has made a fair and reasonable assessment of the evidence before the trial court, an appellate court ought to be reluctant to differ from the findings of primary facts of the trial judge.’

⁵⁶ *ibid*.

⁵⁷ *ibid*, citing with approval Burgess JA in *Ward v Walsh* BB 2012 CA 14 (CARILAW), (28 November 2012), as referenced in *Walsh v Ward* [2015] CCJ 14 (AJ) (BB), (2015) 87 WIR 101 at [6] (emphasis added).

[46] In *Apsara*, the Court pointed out that previously, and more generally, in *Lachana v Arjune*⁵⁸ this Court expressed a preference for a *more flexible approach* than that adopted by the Privy Council in cases such as *Devi v Roy*⁵⁹ and *Dass v Marchand*.⁶⁰ And in-between, in *Ramdehol v Ramdehol*⁶¹ –following *Ramlagan v Singh*,⁶² this Court had suggested that ‘*exceptional circumstances*’ must be demonstrated before it would overturn concurrent findings of fact. In doing so, this Court specifically stated that it did not intend to ‘resile from the more “flexible approach” advocated in *Lachana*.’⁶³

[47] Saunders P would explain his analytical approach to the appellate review of primary facts and inferences, which reasonably summarised the majority view, as follows:⁶⁴

I agree that if any particular fact in issue was *an inference* reached by the trial judge, this Court should not decline to review that inference merely because the Court of Appeal supported the trial judge’s conclusion. Secondly, if the fact in issue is *a primary fact* found by the trial judge, then, if the Court of Appeal endorsed that finding, we should only review it in *exceptional circumstances*. *An exceptional circumstance would include, for example, instances where we were of the view that there was no or no sufficient basis for the finding or where our failure to review the finding would result in a miscarriage of justice.*

[48] I also explained an approach, which is in alignment with Saunders P. It acknowledges the flexibility insisted on in *Lachana*. It establishes a standard of probability for review. It endorses the differences in reviewing primary facts and inferences, identified in *Persaud v Mongroo* and confirmed in *Apsara*. And it articulates a first principles ‘*plainly/clearly wrong*’ lens as overarching, explanatory and inclusive of the non-exhaustive categories given as illustrative of

⁵⁸ [2008] CCJ 12 (AJ) (GY).

⁵⁹ [1946] AC 508.

⁶⁰ [2021] 1 WLR 1788 (TT PC) at [15]–[17].

⁶¹ [2017] CCJ 14 (AJ) (GY).

⁶² [2014] CCJ 5 (AJ) (GY), GY 2014 CCJ 2 (CARILAW) (Nelson J).

⁶³ *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [58] (Anderson J), [237] (Burgess J). And see *Ramdehol v Ramdehol* [2017] CCJ 14 (AJ) (GY) at [45]: ‘Unlike the Privy Council’s strict approach, we opted in *Lachana* for a more flexible approach.’

⁶⁴ *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [6] (emphasis added).

‘exceptional circumstances’ in *Ramdehol*, (and which self-evidently necessitates a *Lachana* flexible approach).⁶⁵

[49] This explanation was as follows:

... reviews by this Court in instances of concurrent findings, are applicable to both primary fact finder’s and intermediate appellate court’s analysis and assessments, ‘on a case-by-case basis,’ applying a ‘plainly/clearly wrong’ probabilistic standard.⁶⁶

[50] Finally, if a primary fact finder is shown to have been ‘*plainly/clearly wrong*’ as explained in this opinion, or to have committed any of the other five shortcomings listed in *Ramdehol*,⁶⁷ or otherwise to have demonstrably clearly, manifestly, or obviously erred in their assessments of facts and credibility, this Court may in the exercise of its flexible power of review intervene and review those evaluative findings. Indeed, there is a sense in which the review standard of exceptional circumstances can even be seen as a subset of the category ‘plainly/clearly wrong’.⁶⁸

This Case

[51] As Barrow J has ably demonstrated, ‘both the trial judge and the Court of Appeal got it *plainly wrong* in finding there was no supporting evidence and in failing to have regard to the objective evidence before the court.’⁶⁹ In his analysis, the

⁶⁵ *ibid* at [389]: ‘In *Ramdehol v Ramdehol*, an appeal to this Court on concurrent findings, a summary of this Court’s jurisprudence (including a non-exhaustive listing of possible ‘exceptional circumstances’), was described as follows (even further evidence of increased flexibility).’

⁶⁶ *ibid* at [411].

⁶⁷ In *Ramdehol v Ramdehol* [2017] CCJ 14 (AJ) (GY), the following non-exhaustive list is given as illustrative of what can constitute ‘exceptional circumstances’ (see *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [231] (Burgess J), [389] (Jamadar J)): ‘When we speak of exceptional circumstances, we mean cases including those where this Court is satisfied that:

- a. there was a miscarriage of justice;
- b. any advantage enjoyed by the trial judge, by reason of having seen and heard the witnesses could not be sufficient to explain or justify the judge’s conclusion;
- c. the reasons of the lower courts are not satisfactory;
- d. there is a lack of clarity and conflicting findings of fact; or
- e. there is a lack of any evidential basis.’

⁶⁸ *Apsara Restaurants (Barbados) Ltd v Guardian General Insurance Ltd* [2024] CCJ 3 (AJ) BB at [412].

⁶⁹ At [4] above (emphasis added). And see at [19] above: ‘The judge’s decision at 36 of the judgment, ... that there was no evidence that supported Ewart’s testimony as to the promise made to him was, therefore, completely erroneous or, as otherwise stated, plainly wrong.’ And at [21]: ‘Regrettably, the Court of Appeal failed to appreciate that they had before them precisely a case where the lower court “made a material error in the evaluation of the evidence” and was “plainly wrong”.’ And also at [24]: ‘The second limb of the conditions

distinctions between ‘contradicted’ and ‘disputed’ evidence are apposite.⁷⁰ And as well, his mapping of relevant social contexts is instructive, both methodologically and substantively,⁷¹ all of which have been explained above.

[52] Indeed, his careful and thorough analysis demonstrates the methodology explained in this opinion and how the application of such an approach is necessary for the avoidance of errors in fact-finding. It also demonstrates the methodology’s usefulness in reviewing first-tier and intermediate courts’ conclusions on facts (primary and inferential). And finally, his pragmatic application of the ‘*plainly wrong*’ lens for analysis of alleged concurrent findings of fact confirms this Court’s recommendations in *Aspara*.

The Appropriate Equity: Overriding Interests

[53] In *Guest v Guest*, Lord Briggs has explained that: ‘One of the principal functions of equity is to put right injustice to which the law is otherwise blind, by restraining the rigid application of legal rules where their implementation would be unconscionable’.⁷²

[54] Part III of the Registered Land Act (the Act)⁷³ deals with the ‘Effect of Registration’ – ss 26 to 33. Section 26 of the Act provides that:

Subject to section 30, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatever, *but subject ...*

(b) unless the contrary is expressed in the register, *to such liabilities, rights and interests as affect the same and are declared by section 31 not to require noting on the register*.⁷⁴

that must exist to permit an appellate court to interfere with a lower court’s findings of fact is where the court got it plainly wrong in finding a fact. This also was fully made out, as detailed above.’

⁷⁰ At [3] above.

⁷¹ At [5]–[7] above.

⁷² *Guest v Guest* [2024] AC 833 at [4].

⁷³ CAP 194.

⁷⁴ *ibid* s 26 (emphasis added).

[55] Section 31 of the Act is relevant and states:⁷⁵

31.-(1) Subject to sub-section (2), unless the contrary is expressed in the register, *all registered land shall be subject to such of the following **overriding interests** as may for the time being subsist and affect it, without their being noted on the register—*

(g) *the rights of a person in actual occupation of land or in receipt of the rents and profits thereof except where inquiry is made of such person and the rights are not disclosed.*⁷⁶

[56] Furthermore, by s 31(2) of the Act: ‘The Registrar may direct registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.’

[57] Subject to stated limitations, registered land is taken subject to overriding interests. The Appellant claims that he has an overriding interest in the Chancellor property pursuant to sub-s 31(1)(g). And it is clear from the statute, and in so far as it is relevant to this case, that for an overriding interest to qualify under sub-s 31(1)(g) it must relate to ‘the rights of a person *in actual occupation of land ... except where inquiry is made of such person and the rights are not disclosed.*’ In this regard there is no dispute that the Appellant satisfies these criteria; he and his family have been in open and known – hence fully disclosed, continuous and undisturbed occupation for over three decades and continuing.⁷⁷

[58] Section 31(1)(g) is therefore the route by which an already-established estoppel equity, coupled with the claimant's actual occupation, gains priority against a new registered proprietor even though it never appears on the title. It is subject to the proviso of non-disclosure where there is an inquiry, and actual occupation by a

⁷⁵ *ibid* s 31(1)(g) is materially identical to the English Land Registration Act 1925 s 70(1)(g) (now Land Registration Act 2002, sch 3 para 2).

⁷⁶ Registered Land Act, CAP 194 s 31(1)(g) (emphasis added).

⁷⁷ See *Robateau v Robateau* (BZ CA, 29 August 2025) at [15]: ‘The Appellant is and was at all material times for decades and currently in actual occupation of the property.’

claimant. Section 31(1)(g) protects but does not create rights, and an occupier must possess a subsisting proprietary interest to benefit from the section's safeguard.

[59] In keeping with the legislative scheme, the existing case law asserts that mere occupation is not enough and has to be coupled with a corresponding overriding interest that is capable of binding the registered proprietor. The Court of Appeal in this matter aptly pointed out: 'The Registered Land Act ... provides safeguards and protections in law for overriding interests.'⁷⁸ Further, two cases, namely *Williams & Glyn's Bank Ltd v Boland*⁷⁹ and *Thomas v Clydesdale Bank plc*,⁸⁰ were referred to by the Court of Appeal to illustrate this point.⁸¹ Both support, in principle,⁸² the Appellant's claim for a registrable overriding interest binding on any new owner.⁸³ In our opinion, an equity arising by proprietary estoppel (one where promise/assurance, reliance and detriment are made out and where it is unconscionable to resile), can be protected where the claimant is in actual occupation, and takes effect as an interest whose priority is safeguarded without registration.⁸⁴

Establishing the Equity

[60] As it relates to the establishment of the doctrine of proprietary estoppel, there can be no dispute that, and as Barrow J has concluded,⁸⁵ the essential requirements of

⁷⁸ *ibid* at [15].

⁷⁹ [1981] AC 487.

⁸⁰ [2010] EWHC 2755 (QB).

⁸¹ See *Robateau v Robateau* (BZ CA, 29 August 2025) at [19].

⁸² For example, *Williams & Glyn's Bank Ltd v Boland* [1981] AC 487 was a consolidated appeal in which both wives contributed to the purchase price of their matrimonial homes even though the properties were registered in their husbands' names on the land register. With defaults being made on both mortgages, the bank instituted proceedings for possession with a view to a sale. The question before the court was whether the legal and registered mortgage takes effect against the marital home or whether the wives' beneficial interests were a priority. The court broke down its investigation by asking whether the wives could be considered persons in actual occupation and whether their equitable interests, if they are in occupation of the land could be considered an overriding interest. (At 503) According to Lord Wilberforce, the term 'actual occupation' should be interpreted literally. (At 504) Here the wives had a physical presence on the property with all the attendant rights that occupiers had, including the right to exclude all others except those with similar rights. (At 505) The court noted that the enjoyment of these rights, including the rights of occupation were subsisting in reference to the registered land. (At 511) It held that since the bank made no inquiries of either wife before granting their husbands mortgages, the bank's claim to possession is defeated by the overriding interests of the wives.

⁸³ See *Robateau v Robateau* (BZ CA, 29 August 2025) at [14]–[19] (Issue Two).

⁸⁴ See *Jones v Stephenson* BZ 2018 CA 9 (CARILAW), (22 June 2018). This case is persuasive authority, as proprietary estoppel was not argued. Belize's Registered Land Act, CAP 194, s 31(1)(g) and the wording in the same section in Guyana are materially identical — both have been derived from the English Land Registration Act 1925 s 70(1)(g). Per Ducille JA at [14], (citing Young J): actual occupation under s 31(1)(g) does not of itself create any interest; it is a gateway that protects a pre-existing legal or equitable proprietary interest, and the occupier must independently hold 'a corresponding legal or equitable interest in the property capable of binding same in the hands of a purchaser.' And at [18] (emphasis added), asserting: '... to successfully claim an overriding interest, the Appellant must show that she has a proprietary or other beneficial interest in the Property.' It should be noted that

⁸⁵ At [27] above.

proprietary estoppel – promise/assurance, reliance, and detriment, have been satisfied on the facts in this case. As indeed, has the overarching consideration of unconscionability – it must be unconscionable for the owner to resile from the promise/assurance.⁸⁶

- [61] In this case, the Appellant was in actual physical occupation of the property and carried out all construction on it, which he financed through loans and his own funds. Moreover, he enjoyed and exercised all the subsisting rights of an exclusive occupier which derived from his acquired proprietary interest in the property. The evidence is clear that the Appellant’s financial contribution to the home, along with his physical presence for 34 years, occurring in the context of an assurance/promise from and with the knowledge, encouragement and acquiescence of Mrs Robateau, created an overriding proprietary interest in the property.

Satisfying the Equity

- [62] The more difficult question may be, how will the arising equity be satisfied? Thus, the real issue at this stage concerns an interrogation of what proprietary interest in the property satisfies this equity.
- [63] In instances of proprietary estoppel, a court is entitled to grant relief that is necessary to satisfy the equity that has arisen. This is a highly discretionary and therefore flexible remedy.⁸⁷ Core considerations are: i) the claimant's reasonable expectation; ii) the extent of the claimant's detriment; iii) the proportionality between expectation and detriment; and iv) as an overarching consideration, what is necessary to avoid unconscionability and to achieve a just outcome.⁸⁸ Ultimately,

⁸⁶ See *Guest v Guest* [2024] AC 833 at [4] (emphasis added): ‘But equity may in such circumstances provide the promisee with a remedy if a *promise* has been made to confer property upon him in the future, (or an informal assurance that the property is already his) in *reliance* upon which he has acted to his *detriment*. The remedy is called *proprietary estoppel*. The word “proprietary” reflects the fact that the remedy is all about promises to confer interests in property, usually land. The perhaps quaint word “estoppel” encapsulates the notion that the equitable wrong which has been threatened or done is the repudiation of the promise where it would be unconscionable for the promisor to do.’ And at [13]: ‘The true purpose, as recognised by the Court of Appeal in the present case, is dealing with the unconscionability constituted by the promisor repudiating his promise.’

⁸⁷ *ibid* at [5]: ‘Equitable remedies are generally more flexible than those afforded by the common law and they are always discretionary.’

⁸⁸ *Guest v Guest* [2024] AC 833. See also Gilbert Kodilinye, *Commonwealth Caribbean Property Law* (5th edn, Routledge 2022) 42; *Jennings v Rice* [2002] EWCA Civ 159 at [28].

a court is seeking to do justice in the circumstances and therefore relief ought to achieve a just and proportionate, fair outcome.⁸⁹ Noteworthy and salient, is the recognition that in the choice between compensating detriment and satisfying the claimant's expectation, the latter is the prevailing consideration; and proportionality is the restraining or limiting factor.

[64] Typically, and because proprietary estoppel creates equitable claims arising from promises/assurances relating to rights or interests in real property, relief can range from: declarations and/or orders which effect a transfer of land such as specific performance; grant of a lease; grant of an easement; declaration of beneficial ownership; constructive trust or equitable lien where appropriate; and/or monetary compensation (or any other order necessary to satisfy the equity).

[65] In this matter, the opinion of Barrow J effectively identifies the evidence relevant to the four core considerations stated above. As Barrow J has explained:

- i) Mrs Anita Robateau, the mother of these two contesting brothers, obtained a lease from the Government of Belize for a parcel of land, 1830 Chancellor Avenue, West Landivar in Belize City.⁹⁰
- ii) The Government gave out leases of parcels at a nominal price on condition that the lessee must develop the land whereupon they would be granted freehold title.⁹¹
- iii) Failure to develop within a stipulated period could result in forfeiture.⁹²
- iv) Mrs Robateau's lot was subject to such forfeiture.⁹³

⁸⁹ *Guest v Guest* [2024] AC 833 at [261] (Lord Leggatt): 'The court has a flexible discretion to fashion a remedy which does justice in the circumstances of the particular case. But, in exercising this discretion, the aim is to award a remedy which does all that is necessary, but no more than is necessary, to prevent B from suffering detriment as a result of having relied on a promise of a gift of property which A no longer intends to make.'

⁹⁰ At [5] above.

⁹¹ At [6] above.

⁹² At [6] above.

⁹³ At [7] above.

- v) That on a balance of probabilities and on the totality of the evidence, it was eminently reasonable to accept that a mother (Mrs Robateau) would induce a son (the Appellant – Ewart) to build on her leasehold land, rather than continuing to live under threat of forfeiture for non-development.⁹⁴
- vi) *That Mrs Robateau would have chosen to outrightly give the land to one of her children if they developed it.*⁹⁵
- vii) And that, as Ewart testified, he was that chosen son, recently returned to Belize from living abroad and in sound employment, who accepted the mother's assurances and inducement to build the house which stands on the property in reliance on her promise to him that he could live exclusively in it for life.⁹⁶
- viii) Upon the whole of the evidence, there was no credible evidence that anyone else built the house or paid for it, and that Ewart spent BDZ100,000 and a further BDZ17,000 in the 1990s to build it, as he testified.⁹⁷
- ix) That Ewart, his wife and three children have lived openly and unchallenged in that house since the time of its construction and from around 1992.⁹⁸
- x) And that Mrs Robateau visited, and that she (and all of her children including the Respondent) knew about, supported and acquiesced in all of the above.⁹⁹

[66] Bearing in mind the evidence identified by Barrow J above, an analysis of its salience for determining what satisfies the Appellant's equity in the property follows. First, the claimant's reasonable expectation. At the barest minimum, a reasonable and minimum expectation of the Appellant in these circumstances,

⁹⁴ At [7] above.

⁹⁵ At [7] above.

⁹⁶ At [7] above.

⁹⁷ At [9] above.

⁹⁸ At [11] above.

⁹⁹ At [18] above.

would have been that he had acquired a life interest with exclusive rights of occupation in the property. That was effectively the minimum reach of the promise made by Mrs Robateau.

[67] Second, the extent of the claimant's detriment. The entire cost of construction, improvements and maintenance of the property have been borne by the Appellant from inception – and for about the last 34 years. The sums disclosed as expended for initial construction are significant and making allowances for a reasonable inference for improvement and maintenance costs over a 34-year period demonstrate, on a balance of probabilities, substantial financial detriment. Of course, detriment is not merely assessed in financial terms, and if one factors in time, planning, supervision, mental, emotional and psychological stress and other such demands on a householder to maintain a property, it is clear that the Appellant must have incurred considerable detriment (likely also spread across his entire family).

[68] Third, the proportionality between expectation and detriment. Here the Appellant has created a home for his family, which includes his children. He has invested significant sums of money, time and effort to do so. And all this to his potential detriment, given that the legal title to the property was in his mother's name, and therefore and as a matter of law, on his demise it would all pass to her or her successor in title (claimed to be the Respondent).

[69] To compound matters, on the evidence, neither his mother nor the Respondent have contributed in any significant ways, or at all, to the development, improvement, or maintenance of the property since its acquisition. Moreover, and as Barrow J has explained, Mrs Robateau would have chosen to outrightly give the land to one of her children if they developed it. Thus, it is difficult to resist a finding that on a measure of proportionality, the Appellant had acquired a life interest with exclusive rights of occupation in the property

[70] Fourth, what is necessary to avoid unconscionability and to achieve a fair and just outcome. An unavoidable fact in this matter, which makes it exceptional, is that the acquisition by Mrs Robateau of the premises was subject to forfeiture if there was no development of the property within a stipulated time. And that it is the Appellant, by his own means and efforts, who developed this property and so secured title in it (technically for his mother), and without any assistance from his mother or siblings (including the Respondent). Simply put, without the Appellant's development of this property legal title would not have passed to Mrs Robateau or anyone else through her.

[71] It would seem therefore that a life interest adequately satisfies the equity that has arisen in favour of the Appellant, and that in these exceptional circumstances it would be unconscionable to conclude otherwise. Indeed, and given what Mrs Robateau promised, a life interest can be considered sufficient to satisfy the Appellant's equity in this case.

Disposition

[72] In these circumstances, we are of the opinion that the Appellant's equity in the property known as and situate at 1830 Chancellor Avenue, West Landivar in Belize City, is satisfied by the following orders:

1. The appeal is allowed;
2. The decision of the High Court is reversed;
3. The Appellant is the holder of a life interest in the property known as and situate at 1830 Chancellor Avenue, West Landivar in Belize City commencing from the year 1992;
4. The Registrar of Lands shall forthwith enter on the land register for this property, Parcel 1839, Block 16, Caribbean Shores Registration Section, the aforesaid interest pursuant to s 31(2) of the Registered Land Act; and

5. Costs to be paid by the Respondent to the Appellant in this Court and in the courts below.

/s/ M Rajnauth-Lee

Mme Justice Rajnauth-Lee

/s/ D Barrow

Mr Justice Barrow

/s/ P Jamadar

Mr Justice Jamadar

/s/ C Ononaiwu

Mme Justice Ononaiwu

/s/ C Eboe-Osuji

Mr Justice Eboe-Osuji