IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION
2004 No. 184

BETWEEN:

CORDELIA MARIE RICHARDSON

Plaintiff

- and -

GLENN TUZO

Defendant

Mr. M. Diel for the plaintiff; and
Mr. H. Komansky for the defendant.

JUDGMENT

INTRODUCTION

1. By this action the plaintiff seeks a declaration that the defendant holds property at 30 Railway Trail, Devonshire on constructive trust for the plaintiff.

2. The plaintiff was born in 1935, and so is now in her early seventies. She was the foster-child of Edward and Frances Flood, a married couple, who took her in when she was an infant and raised her as their own, although they never formally adopted her. There were no other children of the union, but Mrs. Flood had a male child, George William Earlston Tuzo ('Earlston Tuzo'), who was born before the marriage to another father. He was not raised by the Floods, but he maintained a good relationship with his mother. He was the father of the defendant, who is, therefore, the natural grandchild of Mrs. Flood.

3. The property at 30 Railway Trail was the Floods' family home, and was held by them as joint tenants under a conveyance of 23rd March 1950 (B1[1]). It originally formed part of a larger property. In 1984 the Floods obtained permission to subdivide the larger property into two halves. The family home stood on one half, and the other half was empty and unbuilt. By a voluntary conveyance of 13th June 1986 (B6) they then conveyed the empty half to the plaintiff and her daughter as joint tenants. At the time that half was known as Lot 7a, and it is now known as 28 Railway Trail. The remaining half, then designated Lot 7, remained in the ownership of the Floods under the original conveyance of 1950. It is now known as 30 Railway Trail, and is the subject of this dispute. On the death of Mr.

[1] References to documents are to the tab numbers in the agreed trial bundle, which is in two parts (A & B), each with its own sequence of numbered tabs. Part A contains the pleadings etc. Part B contains the evidence.

Flood on 25th June 1988, 30 Railway Trail passed to his wife by right of her survivorship, and not under his will. She then, by an *inter vivos* conveyance of 27th October 1995, conveyed it to herself for her life and thereafter to her grandson, the defendant, absolutely. Mrs. Flood died in June 2003, and the plaintiff commenced these proceedings about a year after her death when the property at 30 Railway Trail did not come to her, as she says she had expected.

4. It is the plaintiff's case that the Floods had always promised to leave the property to her, and that in reliance on that she built an apartment onto the house on what is now 30 Railway Trail, borrowing $10,000 from the bank to do so. Based on that she asserts that the whole of 30 Railway Trail now belongs to her in equity. The defendant puts the plaintiff to proof of the promise and of reliance on it, and in any event asserts that any equity arising from it has been satisfied both by the plaintiff's subsequent occupation of the apartment, and by the gift to her of half the original property. The defendant also alleges that the plaintiff has slept on her rights to his detriment, as the evidence of Mrs. Flood is not now available to him, and is therefore debarred from her claim by the equitable doctrine of laches.

THE PLAINTIFF'S CASE

5. It is the plaintiff's evidence that in the early 1950s (when she was in her late teens) the Floods built the property now known as 30 Railway Trail. The family moved into the house in about 1957, when the plaintiff would have been in her early twenties. At this time she had a baby daughter, Kuni, who was three, having been born on 18th October 1954.

6. I should note in passing that the plaintiff says that she helped in small ways with the building of the house, such as mixing and carrying cement and carrying block. She also says that once it was built she helped maintain the house by painting it and white-washing the roof. However, neither of those are pleaded as the basis of the plaintiff's claim, and in any event I would have regarded them as *de minimis* and insufficient of themselves to support any proprietary claim to the property.

7. There came a time when the plaintiff wanted to build a separate apartment onto the existing house. Although a casual reader of the plaintiff's witness statement might gain the impression this happened soon after the family moved into the house, this was in fact in 1981, some 24 years later, when the plaintiff would have been 46 and her daughter 27. She says that the Floods readily agreed to this, as they had always told her that the property was going to be hers one day in any event. She asked her parents to back her in getting a loan for the construction, and she and Mr. Flood went to the bank where she signed an application form that was filled out by a bank officer at her direction (B5). Although the date on the copy of the loan document is cut of, it records that the payments were to commence on 23rd September 1981.

8. Having obtained the loan, the plaintiff then used it to build the apartment onto the main house, as planned. The apartment was not large: it consisted of an existing bedroom, which was partitioned off from the main house and converted into a kitchen, and then a bedroom and bathroom were built on. The defendant estimated the size of the rooms as follows: kitchen 10 x 8 ft; bedroom 10 x 14 ft; and bathroom 10 x 7 ft. His evidence on that was not contested, and I accept it as giving a fair view of the apartment as constructed. The work was done by a contractor, under Mr. Flood's supervision, and cost slightly more than the $10,000 which the plaintiff had borrowed for it.

9. It is at the heart of the plaintiff's case that she only borrowed this money and built this apartment because her parents told her that the property was going to be hers anyway, and that she would not have done it otherwise as she "was very aware of the need to provide for myself and my daughter and saw no purpose in building an apartment that would go to someone else"[2]. She says that this promise on the part of her parents is born out by the loan document, which under "assets" states "Reversionary Interest in Family Residence 3 B/R with Vacant Lot".

10. The plaintiff's evidence is supported by that of her daughter Kuni Frith-Black, to the extent that she says "there was no secret that she was to inherit the property following the death of my grandparents", and that even after half had been conveyed to her and her mother in 1986, her grandparents continued to make it very clear that the rest of the property was to be her mother's. What she does not say in express terms is that the plaintiff borrowed the money and built the apartment because she was promised the property. Instead she says:

> "I had numerous discussions with my mother as she wanted her own apartment. I had moved out at the time but we did want to live together but needed our own rooms."

11. The plaintiff moved into the apartment in or about 1982, although by that time her daughter was living elsewhere and did not join her in it. The plaintiff then lived in the apartment she had constructed until 1988[3]. Thereafter she let the apartment and received the rent of $600 per month, although not for long. In the interim, as noted above, Mr. and Mrs. Flood had, in 1986, voluntarily conveyed half of the original property to the plaintiff and her daughter jointly. The plaintiff says that she had asked for that half, as she wanted to build a house on it, which at some point she did, apparently moving into that house when she vacated the apartment.

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[2] See her witness statement, p. 2

[3] In her evidence she said she moved out in 1985, but she later sought to correct this through her counsel to 1988, and I have accepted that later date as it was not contested and accords with the rental agreement at B8.

12. Mr. Flood, whom the plaintiff had regarded as her father, died on 25th June 1988. About three months later the relationship with Mrs. Flood, whom she had regarded as her mother, soured, for reasons which the plaintiff is unable to explain, and by October of that year Mrs. Flood's lawyer was writing to the plaintiff demanding that the rent from the apartment be paid to the mother. The plaintiff says that she acquiesced in that as she did not want to upset her mother, who had been very good to her, and who was getting on in years, and that in any event she knew she would be getting the property on her death.

13. However, that was not to be. As noted above, the property had always been held in the joint names of Mr. and Mrs. Flood, and after the subdivision 30 Railway Trail remained in their joint names. On the death of Mr. Flood, 30 Railway Trail therefore passed to his widow by right of survivorship and not under his will. In 1995 Mrs. Flood, unbeknownst to the plaintiff, conveyed that property by a voluntary conveyance of 27th October 1995, to herself for life and thereafter to her grandson, the defendant, absolutely. Mrs. Flood then died in June 2003.

14. At this point I should note that the nature of the plaintiff's claim has changed radically since these proceedings were first commenced. The original statement of claim of 3rd June 2004 was founded upon Mr. Flood's will, alleging the property passed under it to Mrs. Flood for life and then to the plaintiff absolutely. A defence was then filed, which set out the true conveyancing history as recited above. The plaintiff then amended the statement of claim to abandon reliance upon the will, and to substitute reliance on the alleged promise that she would inherit.

THE PLAINTIFF'S DISPUTES WITH MRS. FLOOD

15. There is some evidence that Mr. Flood may have particularly favoured the plaintiff. There is even a hint that he may have been her father, but there is no evidence to substantiate that. There was also a suggestion that the relationship between them was inappropriately intimate, but there was absolutely no evidence to substantiate that. However, it is clear that shortly after his death various legal disputes arose between Mrs. Flood and the plaintiff, and this was matched by a breakdown in their personal relationship.

16. In October 1988 Mrs. Flood laid claim to the rent from the apartment. In a letter of 21st October 1988 (B12) Hallett Whitney and Patton on behalf of Mrs. Flood, wrote to the Plaintiff in the following terms:

> "As you did not keep your appointment on Friday last with our Mr. Patton, we had to take the action set out in the enclosed letter.
>
> We are instructed that you needed the apartment as a convenience for yourself so that you could have an automobile and you lived in it for a very considerable time rent free.

> In addition, by a Voluntary Conveyance dated 13 June, 1986, you were conveyed a lot of land on which you have constructed a house which we would estimate to be worth a good deal more than $50,000.00 on the open market. The money which you spent on converting the apartment nowhere near equates."

17. The "action" referred to seems to have been a letter of the same date to the plaintiff's rental agent, John Swann Ltd., (B13) informing them:

> "Mr. Flood died in June of this year and as the house was owned by Mr. and Mrs. Flood in joint tenancy, the rents are now payable to Mrs. Flood."

18. The plaintiff says that she took legal advice at this time, but let the matter go as she thought that the property was coming to her anyway. However, in April 1989 she seems to have instructed the firm of Richards Francis and Francis to commence proceedings over the rent (see B15), but again she says that she let it go for the same reason.

19. In 1994 there was a dispute over the right of way to 30 Railway Trail, which crossed the plaintiff's land at 28 Railway Trail. This time the plaintiff (who was by now married) retained Hallett Whitney & Patton to write to Mrs. Flood about obstructions to the right of way (B17). However, it did not take Hallett Whitney & Patton long to realize the conflict, and they bowed out.

20. In June 1995 the plaintiff was pursuing the question of title to 30 Railway Trail. She first instructed M.L.H. Quin & Co., who seem to have laboured under considerable confusion about the ownership of the mother's property (see B21). By July 1995 the plaintiff had instructed Mr. Dwyer, then of Hector & Associates, who wrote to Hallett Whitney & Patton about Mr. Flood's will. They wrote back on 14th September 1995 (B26) explaining the joint tenancy point, and this letter was then passed on to the plaintiff by her attorneys with a covering letter of 29th September further explaining the point (B27). The plaintiff concedes that she received that letter and that the point was explained to her at this time, although she interprets it as the will being 'faulty' or 'not made out right'.

21. The letter of 29th September 1995 to the plaintiff from her then attorneys is important, and so I will set it out in full. It read as follows:

> "**RE: ESTATE OF EDWARD LEROY FLOOD**
>
> We enclose herewith a copy letter I have received from Hallett, Whitney & Patton together with the enclosure. It appears that following the subdivision the property at 30 Railway Trail remains in the names of Mr. Edward and Mrs. Flood that property having been acquired by them as joint tenants by way of Conveyance of March 23, 1950.
>
> When your father died he bequeathed the residue of his estate to his wife either absolutely or with a life interest. However as to the house at 30 Railway Trail was held as joint tenants on his death Mrs. Frances Flood automatically became

> the sole legal owner and as, such the Will does not relate to that property as it does not form part of the residue of the estate.
>
> In those circumstances Mrs. Frances Flood is clearly the legal owner of that property [#30] and it will devolve into her estate on her death.
>
> The position is basically as we initially set out in paragraph 1 of our letter to you of May 3, 1995.
>
> If (sic) appears to me therefore that the action brought on your behalf in the Supreme Court is ill found and will not succeed. There is no evidence that there was an actual loan by you to your father.
>
> You of course lived rent free in the property for seven years, and it could be argued that the contribution made by you was repaid in any event."

22. The letter of 3rd May referred to by Mr. Dwyer is not in evidence, and there was no legal action in being at that time, but, subject to that, the letter is clear advice to the plaintiff of the way that 30 Railway Trail had devolved. It also seems that, at that stage at least, she was seeking to contend that the $10,000 was a loan to her father.

23. The plaintiff did not pursue legal action further at that stage, although she and her husband wrote a personal letter to Mrs. Flood on 13th October 1995, pursuing complaints about the right of way. It is plain that by this time, if not long before, the relationship between the plaintiff and Mrs. Flood had broken down completely. They were not on speaking terms, and the plaintiff says that Mrs. Flood would shout out insults and harass her, and was maintaining that she stole the property at 28 Railway Trail. It is in that context that Mrs. Flood then conveyed 30 Railway Trail to her grandson by an indenture of 27th October 1995 (B30), although the plaintiff says, and I accept, that she was not aware of that until after Mrs. Flood died in 2003.

THE DEFENCE CASE

24. The defendant's evidence adds little to the narrative. He was not privy to the relationship between the plaintiff and her parents. He explained that his father, Earlston Tuzo, had been alive at the time of the conveyance of the property to him, but had felt that, as he had his own property, it was better if it were left direct to the son. His father then died on 1st July 2005, but before his death he had given an unsigned statement to the defendant's lawyer in respect of this matter. In it he says that he had been away when the property was subdivided and half conveyed to the plaintiff. He says that he had told his mother not to sign anything while he was away, but she did. He explained the transaction by saying that the land conveyed to the plaintiff was Mr. Flood's share of the property, while 30 Railway Trail, which was retained in their joint names, represented Mrs. Flood's share, to do with what she wanted, and that was why she signed the conveyance to the plaintiff.

25. Earlston Tuzo's widow was also called, and she introduced two new elements, namely (a) that Earlston Tuzo had put up a substantial portion of the original purchase

price for the whole property back in 1950, but had had his mother's name put on the title deeds as he was too young, being under 21; and (b) that Mrs. Flood had been dominated by her husband and bullied into doing things. As to (a), this first emerged in her oral evidence. It was, perhaps, foreshadowed in Mr. Earlston Tuzo's statement, where he said that he "paid for the conveyance/transfer of the property to my mother and Mr. Flood", but it also conflicts with it as to the nature and extent of his contribution. Otherwise, this assertion came out of the blue. It was not pleaded; no discovery was given in respect of it; and no documents are produced to support it. Nor did I find Mrs. Tuzo a believable witness in this respect. I therefore reject this assertion. As to (b), it is a possibility, and may help explain Mrs. Flood later behaviour toward the plaintiff, but having rejected Mrs. Tuzo's evidence on her husband's alleged contribution, I do not feel able to accept it on this other matter. The point is, however, but one indication of the difficulty the court is placed in by the passage of time and the absence of Mrs. Flood as a witness.

THE LAW

(i) Equitable Remedies

26. The plaintiff pleads her case in constructive trust. The body of law which has grown up concerning constructive trusts of land has done so largely in the context of the acquisition of property by couples, although it is not necessarily limited to such relationships. In recent years it has found a ready application in the difficult area of property rights as between unmarried partners. The key point is that it is based upon a common intention, express or inferred, at the time of the acquisition of the property. There is, however, a closely related doctrine of proprietary estoppel, by which a stranger to the acquisition of a property can subsequently acquire an enforceable equity in it. The elements of the two causes of action are practically, if not now entirely, identical:

> "The principles which apply [to constructive trusts] are closely akin to those underlying the doctrine of proprietary estoppel. In both the claimant must have acted to her detriment in reliance on the belief that he would obtain an interest. In both equity acts on the conscience of the legal owner to prevent him from defeating the common intention. The distinction between the claimant's rights under an estoppel and under a constructive trust is now much diminished since both may operate as interests in land and be overreached. The difference remains, however, that the remedy by which an estoppel is enforced is discretionary, while under a constructive trust the claimant is entitled to her agreed beneficial share." (Snell's Equity, 31st ed., 2005, at p. 565, para. 22-39)

27. In my judgment the doctrine of constructive trusts has no real bearing on the plaintiff's claim to the whole of 30 Railway Trail, as she was in no sense a party to its acquisition. It may, however, have an application to the acquisition of the apartment at the time of its construction: it may be that plaintiff could advance a claim to ownership of the apartment on that basis, but that is not the pleaded claim (although I have dealt with it further below).

28. In this case, therefore, it is to a proprietary estoppel that the plaintiff must look if she is to assert a claim against the whole of 30 Railway Trail. The Court's approach in such a case was considered in Gillett v Holt [2001] Ch. 210, which concerned the expectation of an inheritance. The thrust of the judgment is accurately set out in the headnote, which reads:

> ". . . the fundamental principle that equity was concerned to prevent unconscionable conduct permeated all the elements of the doctrine of proprietary estoppel; that although the element of detriment was an essential ingredient of proprietary estoppel the requirement was to be approached as part of a broad inquiry as to whether repudiation of an assurance was unconscionable in all the circumstances; that where assurances given were intended to be relied on, and were in fact relied on, it was not necessary to look for an irrevocable promise since it was the other party's detrimental reliance on the promise which made it irrevocable; that, when ascertaining whether promises and assurances repeated over a period of many years as to future rights over property were sufficient to found a claim for equitable relief, it was necessary to stand back and look at the claim in the round;"

(ii) Laches

29. To the extent that the defendant relies upon the plaintiff's delay in enforcing her rights, I have taken the relevant law from the following extracts from Spry's 'The Principles of Equitable Remedies', 4th ed. 1990:

> "The term "laches" has commonly been used in two senses. In the first sense it refers simply to delay of the plaintiff in pursuing relief; and here it should be noted that delay by itself can no longer be thought to give rise to an equitable defence. In the second sense, which is the only sense in which it is now relevant in courts of equity, it refers to a position that the delay of the plaintiff in pursuing relief has brought about, and here it is the position caused by the delay, and especially its effects on the defendant himself, rather than the delay itself, which causes the court to deny relief.
>
> . . .
>
> Laches is established when two conditions are fulfilled. In the first place, there must be unreasonable delay in the commencement or prosecution of proceedings; in the second place, in all the circumstances the consequences of delay must render the grant of relief unjust. These two conditions will be considered in turn.
>
> . . .
>
> The point of time as from which the reasonableness of delay is determined is, prima facie, the time at which the plaintiff came to know of the facts that had given rise to the ground of equitable intervention in question. So it has been said that it is "if not universally at all events ordinarily" necessary that there should be "sufficient knowledge of the facts constituting the title to relief". Hence ordinarily it does not matter whether the plaintiff was then aware that he was entitled as a matter of law to equitable intervention. It has been said, "Generally, when the facts are known from which a right arises, the right is presumed to be known."
>
> . . .
>
> Ultimately these matters depend on the particular circumstances and the justice and reasonableness of granting the particular relief in question. The governing

> consideration in regard to matters of notice, and that to which general rules must be subordinated, is that there must be "such notice or knowledge as to make it inequitable to lie by" in regard to the particular discretionary relief that is subsequently sought, in the light of all the relevant considerations tending for and against the grant of that relief.
>
> . . .
>
> There are many ways in which the delay of the plaintiff may give rise to a substantial prejudice to the defendant. A common case is found where the defendant loses meanwhile access to documents or other evidence that affects substantially his ability to defend himself. A further common example arises where, during the period of unreasonable delay, dispositions are made either by the defendant or by a third party and it would be inequitable to disturb them. This is so especially if later interests are acquired for value, but even if there are merely voluntary dispositions it is sometimes found to be unjust to disturb them."

CONCLUSIONS

30. In considering the facts I am very conscious that the only contemporary witnesses I have to all the relevant events who were privy to the private dealings of the Flood family, are the plaintiff and her daughter. In particular I do not have the evidence of Mr. or Mrs. Flood, yet this may have been acutely relevant not only to the question of any promises that were made, but also to following important issues:

> (i) the exact arrangements and understanding concerning the creation of the apartment;
>
> (ii) the considerations leading to the voluntary conveyance of half the original property to the plaintiff in 1986; and
>
> (iii) the circumstances surrounding Mrs. Flood's falling out with the plaintiff after the death of Mr. Flood and her assertion of the right to the rent from the apartment in 1988.

This has severely hampered me in making fair findings of fact, and is very relevant to the question of laches, which I consider further below.

31. Notwithstanding these difficulties, I accept and find as a fact that, during Mr. Flood's life, he had promised to leave all the property to the plaintiff, and that at that time Mrs. Flood concurred in that, or at least did nothing to dissent. I accept that because it is supported by the loan document at B5, and by the plaintiff's daughter, who I accept as a witness of truth on this. However, such a promise of itself does nothing to convey an interest or enforceable right to the plaintiff, for it is notorious that wills are ambulatory, and that expressions of testamentary intent do not, on their own, confer rights. It is in order to meet this want that the plaintiff alleges reliance on that promise to her detriment, in the form of the building on of an apartment.

32. On this central issue I accept the plaintiff's evidence that, when she obtained the loan and built the apartment, she did so in reliance on an understanding that the whole property would be hers one day. That was not, however, the sole or even primary factor in her building the apartment. I have no doubt that her primary motivation was because she wanted an apartment of her own. However, I also accept that, to give rise to an enforceable equity, the promise relied upon does not have to have been the sole inducement for the conduct: it is sufficient if it is an inducement: See Balcombe LJ in Wayling v Jones (1993) 69 P & CR 170 at 173, cited with approval by Robert Walker LJ in Gillett v Holt [2001] Ch 210 at 226.

33. However, in my judgment any equity to be obtained by the plaintiff has to be related to the nature of the reliance and the extent of the detriment. The plaintiff spent about $10,000 in the money of 1981 to create a small apartment. The Floods contributed the land, and the existing bedroom which lay at the heart of the conversion. In my judgment, the expenditure of $10,000 to create a small apartment from part of the property, could never give the plaintiff a subsequent right to the whole of the host property. Indeed, *that* would be unconscionable. I can see, however, that, by relying on that permission and borrowing the money and spending it to create an apartment, the plaintiff may have obtained a beneficial interest *in the apartment* thus created. Whether that is by application of the doctrine of constructive trusts or proprietary estoppel the outcome is, I think, the same.

34. Whatever equity the plaintiff may have obtained in the apartment by her investment, I think that it has long since been satisfied. The plaintiff lived in the apartment without paying any rent until 1988. During that period the apartment had, on the plaintiff's own evidence, a separate assessment number, so that she was able to have her own car. When she was able to let the apartment (albeit for a short period before Mrs. Flood intervened), it was let for $600 per month. The rental income from the property in 1988 is an indication of the benefit that the plaintiff had received in return for her investment in the intervening six or seven years. After that length of time, I would not have thought it unconscionable for Mrs. Flood to take the stance that, as long as the woman she brought up as her daughter lived in the apartment, she should have it rent free, but that if she moved out it would revert to the surviving parent and a stranger should pay her rent for it.

35. Of course, we do not know that that was the precise stance taken by Mrs. Flood, for she is deceased and we do not have the benefit of her evidence. But that was the effect of what in fact occurred. In any event, by the time that Mrs. Flood asserted a right to the rent from the apartment, the plaintiff had received one half of the whole property (albeit the empty or unbuilt half) outright, without having to wait for Mrs. Flood's demise, and had built her own house upon it, into which she moved. I note from B8 (although it was not expressly referred to in evidence) that at the time of the conveyance the parties valued the

land at $70,000 for Stamp Duty purposes, and it is unlikely that that would be an overvaluation. Looked at in the round, therefore, it seems to me that the plaintiff received far more from the Floods than her modest investment in the apartment, and that there was nothing unconscionable in Mrs. Flood asserting a right to that apartment in 1988, once the plaintiff had moved out of it into a house built on land that Mrs. Flood and her husband had given her. I do not think, therefore, that any equity the plaintiff may have had in the apartment survived after she vacated it.

36. If I were wrong, and the plaintiff did have a surviving equity in the apartment after she vacated it, she is, in my judgment, now debarred by her delay from asserting it. The time to have enforced any such right was when Mrs. Flood asserted a contrary interest shortly after her husband's death by demanding to receive the rents. It is plain from the documents at B15 that the plaintiff sought legal advice and contemplated action at that time. While I accept that the plaintiff says that she did not pursue it because she expected to inherit it all anyway, she really had no right to that expectation. That is because she had, at that point, all the information necessary to understand the true position, namely that the Floods were joint tenants, and 30 Railway Trail did not, therefore, pass under Mr. Flood's will and was not held by Mrs. Flood on the terms of that will. She had that information because it was set out in the recitals of the conveyance to her of 28 Railway Trail of 13th June 1986. Having taken the benefit of that conveyance she could not thereafter deny the title of one of her grantors. And from 1988 she should have been disabused of any believe that Mrs. Flood would voluntarily leave the property to her by the letter of 21st October from Hallett Whitney & Patton (B12), and by that lady's persistently hostile behaviour thereafter.

37. Even if I were wrong in regarding the plaintiff as having all the necessary facts in 1988, by 1995, while Mrs. Flood was still alive, the plaintiff was certainly apprised of them by Mr. Dwyer's letter of 29th September of that year (B27), which explained in terms that 30 Railway Trail did not form part of Mr. Flood's estate, that it belonged outright to Mrs. Flood "and it will devolve into her estate on her death". That was the latest point at which the plaintiff should have commenced any action in respect of the apartment. Her failure to do so then appears to be due to her lawyer's clear advice that it would fail, rather than to any remaining filial piety.

38. By not asserting her claim and not commencing proceedings at either of these earlier dates, the plaintiff has put the present defendant in a disadvantageous position, because he is deprived of his grandmother's evidence, which has led to a wholly one-sided presentation of the facts in this case. I have detailed that further in paragraph 30 above. In my judgment that would be sufficient reason to refuse equitable relief to the plaintiff, applying the considerations set out in the passages from Spry's Equitable Remedies quoted in paragraph 29 above.

SUMMARY

39. In summary, I consider that the plaintiff's only claim lies in proprietary estoppel, and that her claim for a constructive trust over the whole property is misconceived in law. I hold that any equity that arose from her expenditure on creating an apartment extended only to that apartment in any event, and was satisfied both by her occupation of it until 1988 and by the conveyance to her of half the original property in 1986. I consider that either of those matters, standing alone, would have been sufficient, although their cumulative effect is obviously more powerful.

40. If I were wrong on that, and the plaintiff did have an outstanding equity in the apartment after 1988, then she effectively lost it by failing to enforce it either then or in 1995 (when it is plain that she was considering legal action to do so), and she is now debarred from doing so, the intervening death of Mrs. Flood making it difficult if not impossible to try this action fairly.

41. I therefore dismiss the plaintiff's claim and find for the defendant. I will hear the parties as to costs.

Dated this 5th day of January 2007

Richard Ground
Chief Justice