[2016] JMSC Civ 14

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013HCV02915

BETWEEN	**LOIS HAWKINS (Administratrix of Estate of William Walter Hawkins, Deceased, Intestate)**	**CLAIMANT**
AND	**LINETTE HAWKINS McINISS**	**DEFENDANT**

IN CHAMBERS

Marion Rose Green for the claimant

Leroy Equiano for the defendant

November 24, 2015 and January 29, 2016

PROPERTY – EXTINCTION OF TITLE BY ONE CO-OWNER – WHETHER TITLE EXTINGUISHED – HUSBAND DECEASED - WHETHER THIRD WIFE CAN CLAIM PROPERTY UNDER EXTINCTION OF TITLE PRINCIPLE

SYKES J

The litigants

[1] Mr William Walter Hawkins ('William') had three wives. The first wife, Mrs Merlene Hawkins, ('Merlene') has not figured in this claim except to say that at one point her name was on the disputed property. That union broke down and there was a declaration of her interest which was subsequently bought out and her name was removed from the title. The contest in this case is between the second Mrs Hawkins (Mrs Linnettte Hawkins McIniss ('Linnette')), and the third Mrs Hawkins ('Lois'). I have used the first names to distinguish the four Hawkins in this case. It should not be taken as a lack of deference.

The undisputed evidence

[2] On February 9, 1976 William and Merlene were entered as the registered proprietors (a joint tenancy) of the disputed property registered at volume 1086 folio 879 of the Register Book of Titles and bears the civic address of 199 Sunnyfield Park, Willowdene, Spanish Town, St Catherine ('the disputed property'). Arising from a court order dated October 15, 1987, the joint tenancy was severed and William and Merlene were registered as tenants in common.

[3] On December 18, 1989, William and Linnette were registered as joint tenants. They are still the registered proprietors and still registered as joint tenants. William is now deceased and in the normal course of things Linnette would have taken his interest under the right of survivorship. Things have become complicated. Lois is claiming that Linnette's title was extinguished during the life time of William and therefore Linnette does not take the full property by virtue of the being joint tenant. That this is possible even though Lois did not contribute a single cent to the acquisition of the property is no longer in doubt (**Wills v Wills** (2003) 64 WIR 176; **Fullwood v Curchar** [2015] JMCA Civ 137).

[4] Before continuing it is necessary to explain how Linnette's name came to be registered with William as joint tenants. Linnette says that after the marriage

between William and Merlene broke down the court declared the respective interests of each party. She told Williams that she would not be living in another woman's property. She and William decided to pay Merlene the value of her interest. This was done. After Merlene was paid off Linnette's name was placed on the title along with William's as joint tenants.

[5] William and Linnette divorced. William and Lois got married. According to Lois the decree absolute was granted on March 21, 1999 and they were married two days later on March 23, 1999. Linnette says that she did not know of this divorce because she was not served with any papers. On her version Linnette divorced William, using the Canadian legal system, on October 16, 2007 but the order took effect on November 16, 2007. In support of her assertion, Linnette has exhibited a document called a Certificate of Divorce from the Ontario Superior Court of Justice. By contrast, Lois has not produced any divorce papers. Indeed, as far as the marriage is concerned Lois has not produced a marriage certificate. What she has produced is a copy of the bridal copy given to the bride by the marriage officer. This means that there is no supporting document that William was divorced from Linnette at the time Lois said the divorce was finalised and neither is there satisfactory proof that Lois and William are in fact married.

[6] William died on November 21, 2009. There is a death certificate to that effect.

[7] On William's death Linnette, by court action, sought to have Lois evicted from the property. By a notice to quit dated October 25, 2011 and served October 31, 2011, Linnette gave Lois notice to quit and deliver up possession. To effect this move, Linnette appointed Mr Neville Lawes by way of power of attorney.

[8] Lois fought back. Lois was granted letters of administration of William's estate on May 30, 2012. As Administratrix of William's estate Lois has filed this claim asking for a declarations that (a) the disputed property forms part of William's estate; (b) that Linnette holds the property on resulting trust for the estate of William; (c) that the property was the matrimonial home of William and Lois; (d) that Lois, as William's wife, is entitled to an interest in the disputed property; (e)

that the Registrar of Titles be directed to cancel the current title and issue a new one in the name of Lois Hawkins and (f) the Registrar of the Supreme Court be empowered to sign all necessary documents assuming that Lois is granted any of the remedies sought by her.

[9] Lois' proposition is that Linnette's title has been extinguished during the life time of William which means that William has the entire legal and equitable interest in the property. Lois also says that, on this premise, since William did not leave a will the property has to be dealt with under the rules of intestacy which means, she says, as William's widow, that she takes the property on intestacy in priority to Linnette who would stand behind her in the table of successors to the property.

[10] If Lois is correct then it would mean that the survivorship principle that would normally have enabled Linnette to take the full legal and equitable interest would be displaced. It is also important to note that Lois is not relying on her possession to displace Linnette's title but rather on William's conduct in relation to the property. This is so because Lois first entered the property as William's licensee and so she herself would not have the type of possession required by the law under the principle of extinction of title as expounded by **J A Pye (Oxford) Ltd v Graham** [2003] 1 AC 419.

[11] It is useful at this stage to say what the law is so that we are clear on what the evidence is to yield if Lois is to be successful in her extinction of title claim.

The Law

[12] The law in this area is no longer in doubt. It was most recently expounded by the Court of Appeal in **Fullwood v Curchar** [2015] JMCA Civ 37. This court cannot improve on the clarity, precision and exposition of McDonald Bishop JA (Ag). The court will simply refer to paragraphs **[29]** to **[54]**. From these passages the following propositions are established:

(i) the fact that a person's name is on a title is not conclusive evidence such that such a person cannot be dispossessed by another including a co-owner;

(ii) the fact of co-ownership does not prevent one co-owner from dispossessing another;

(iii) sections 3 and 30 of the Limitation of Actions Act operate together to bar a registered owner from making any entry on or bringing any action to recover property after 12 years if certain circumstances exist;

(iv) in the normal course of things where the property is jointly owned under a joint tenancy and one joint tenancy dies, the normal rule of survivorship would apply and the co-owner takes the whole;

(v) however, section 14 of the Limitation of Actions Act makes the possession of each co-tenant separate possessions as of the time they first become joint tenants with the result that one co-tenant can obtain the whole title by extinguishing the title of the other co-tenant;

(vi) the result of sections 3, 14 and 30 of the Limitation of Actions Act is that a registered co-owner can lose the right to recover possession on the basis of the operation of the statute against him or her with the consequence that if one co-owner dies the normal rule of survivorship may be displaced and a person can rely on the deceased co-owner's dispossession of the other co-owner to resist any claim for possession;

(vii) when a person brings an action for recovery of possession then that person must prove their title that enables them to bring the recovery action and thus where extinction of title is raised by the person sought to be ejected, the burden is on the person bringing the recovery action to prove that his or her title has not been extinguished thereby proving good standing to bring the claim;

(viii) the reason for (vii) above is that the extinction of title claim does not simply bar the remedy but erodes the very legal foundation to bring the recovery action in the first place;

(ix) dispossession arises where the dispossessor has a sufficient degree of physical custody and control over the property in question and an intention to exercise such custody and control over the property for his or her benefit;

(x) the relevant intention is that of the dispossessor and not that of the dispossessed;

(xi) in determining whether there is dispossession there is no need to look for any hostile act or act of confrontation or even an ouster from the property. If such act exists it makes the extinction of title claim stronger but it is not a legal requirement;

(xii) the question in every case is whether the acts relied on to prove dispossession are sufficient.

[13] It is fair to say that in this area of law the analysis of and interpretation of the evidence is influenced by whether the person claiming to extinguish the title is a co-owner or a trespasser. The law seems to require more of a trespasser than a co-owner. The difficulty in co-owner cases, where the dispossessing co-owner has been in possession, is in identifying the point in time when the relevant intention was formed. The difficulty arise because more often than not the intention is an inference from the act of possession.

[14] In all this the very important judgment of Slade J must not be overlooked. His Lordship in **Powell v McFarlane and another** (1979) 38 P & CR 452 stated at page 472:

> *The question of animus possidendi is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess, unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance*

> *of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner. (emphasis added)*

[15] In this passage it is important to note the favour with which co-owners or the person with an immediate right to possession is viewed.

[16] And at pages 476 – 477 Slade J said:

> *In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner. The status of possession, after all, confers on the possessor valuable privileges vis-a-vis not only the world at large, but also the owner of the land concerned. It entitles him to maintain an action in trespass against anyone who enters the land without his consent, save only against a person having a better title to possession than himself. Furthermore it gives him one valuable element of protection even against the owner himself. Until the possession of land has actually passed to the trespasser, the owner may exercise the remedy of self-help against him. Once possession has passed to the trespasser, this remedy is not available to the owner, so that the intruder's position becomes that much more secure; if he will not then leave voluntarily, the owner will find himself obliged to bring proceedings for possession and for this purpose to prove his title.*
>
> *…*
>
> *I would add one further observation in relation to animus possidendi. Though past or present declarations as to his intentions, made by a person claiming that he had possession of land on a particular date, may provide compelling evidence that he did not have the requisite animus possidendi, in my judgment statements made by such a person, on giving oral evidence in court, to the effect that at a particular time he intended to take exclusive possession of the land, are of very little evidential value, because they are obviously easily capable of being merely self-serving, while at the same time they may be very difficult for the paper owner positively to refute. For the same reasons, even contemporary declarations made by a person to the effect that he was intending to assert a claim to the land are of little evidential value for the purpose of supporting a claim that he had possession of the land at the relevant date unless they were specifically brought to the attention of the true owner. As Sachs L.J. said in Tecbild Ltd. v. Chamberlain, "In general, intent has to be inferred from the acts themselves."*

[17] Trespassers do indeed have a higher evidential burden.

[18] Slade J continues at pages 477 - 478:

> *There are a few acts which by their very nature are so drastic as to point unquestionably, in the absence of evidence to the contrary, to an intention on the part of the doer to appropriate the land concerned. The ploughing up and cultivation of agricultural land is one such act: compare Seddon v. Smith. The enclosure of land by a newly constructed fence is another. As Cockburn C.J. said in Seddon v. Smith "Enclosure is the strongest possible evidence of adverse possession," though he went on to add that it was not indispensable. The placing of a notice on land warning intruders to keep out, coupled with the actual enforcement of such notice, is another such act. So too is the locking or blocking of the only means of access. The plaintiff however, did none of these things in 1956 or 1957. The acts done by him were of a far less drastic and irremediable nature. What he did, in effect, was to take various profits from the land, in the form of shooting and pasturage, hay and grass for the benefit of the family cow or cows and goat, and to effect rough repairs to the fencing, merely to the extent necessary to secure his profits by making the land stockproof. On many days of the year neither he nor the animals would have set foot on it. These activities, done, as they were, by a 14-year-old boy who himself owned no land in the neighbourhood, were in my judgment equivocal within the meaning of the authorities in the sense that they were not necessarily referable to an intention on the part of the plaintiff to dispossess Mr. McFarlane and to occupy the land wholly as his own property. At first, surely, any objective informed observer might probably have inferred that the plaintiff was using the land simply for the benefit of his family's cow or cows, during such periods as the absent owner took no steps to stop him, without any intention to appropriate the land as his own.*
>
> *…*
>
> *The basis of the principle seems to be that when a trespasser seeks to oust the true owner by proving acts of unauthorised and long continued user of the owner's land, he must show that those acts were done with animus possidendi, and must show this unequivocally. It is not, in my view, enough that the acts may have been done with the intention of asserting a claim to the soil, if they may equally have been done merely in the assertion of a right to an easement or to a profit à prendre. When the acts are equivocal—when they may have been done equally with either intention—who should get the benefit of the doubt, the rightful owner or the trespasser? I think it should be given to the rightful owner.*

[19] This reasoning was approved by the House of Lords in **J A Pye** which was later held by the Privy Council in **Wills v Wills** to have correctly stated the law.

[20] Despite the clarity with which the law has been stated, the problem is in the application because in cases of extinction of title there is rarely, if ever, a declaration by the dispossessor that 'I intend to dispossess whomever is the owner.' It is more often than not a matter of inference from the act of possession and the conduct of the dispossessor after being in possession.

[21] In **J A Pye** Lord Browne-Wilkinson stated that at common law the term 'possession' required 'an intention to possess **in addition to objective acts of physical possession. Such intention may be, and frequently is, deduced from the physical acts themselves**' (emphasis added) (para 40). His Lordship added that '[i]t is not the nature of the acts which A does but the intention with which he does them which determines whether or not he is possession' (para 40). At first sight it may appear that his Lordship is de-emphasising Slade J's emphasis of the importance of the nature of the physical acts. It will be recalled that Slade J held that if the acts are equivocal then the claim will fail whereas if they are unequivocal the claim is more likely to succeed. It is the view of this court that Lord Browne-Wilkinson was not downplaying the importance of the nature of the act. This is so because Lord Browne-Wilkinson, earlier in the judgment, had indicated that, minor corrections apart, he approved of the judgment of Slade J which was described by his Lordship as a remarkable judgment because of the skill demonstrated by Slade J in successfully navigating his way through difficult judgments of the Court of Appeal. So successful was Slade J that Lord Browne-Wilkson held that Slade J's analysis of the law was correct and those of the Court of Appeal incorrect.

[22] Slade J dealt with what the conclusion should be when the acts relied on are equivocal. Slade J's views were not disapproved by Lord Browne-Wilkinson and so his Lordship must be taken as agreeing that unequivocal acts are necessary for the extinction of title claim to succeed. Slade J makes the point that '*it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi* ***in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner***' (emphasis added). There is no reason to conclude that the same analysis does not apply to co-owners In other words, whether one is dealing with a trespasser or a co-owner, where the acts being relied on to infer the intention to

possess are equivocal then the extinction of title action will fail because a fundamental legal requirement would not have been satisfactorily proved.

[23] Thus the nature of the acts being relied on for the inference of the intention to possess is important. That Lord Browne-Wilkinson understood this is shown in paragraph 41 where his Lordship expressly cited and approved this passage from Slade J found at pages 470 and 471 of Slade J's judgment:

> *(3) Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.*

[24] The nature of the factual possession, the type of property in question, the common use of the property and the like are important factors in the analytical process because, as Lord Browne-Wilkinson pointed out, the intention to possess in more often than not inferred from the fact of possession. This means that the more unequivocal the nature of the physical possession the easier it will be to infer the intention to possess and conversely, the more equivocal the nature of the physical possession the more difficult or the less easy it is to infer the intention to possess.

[25] Thus, the ability of the dispossessor to prove his or her 'intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow' (expressly approved by Lord Browne-Wilkinson at para 43) is influenced by the nature of the physical acts of possession being relied on.

[26] That the nature of the acts relied on is important on this question of intention is shown by the fact that in **J A Pye**, the trial judge relied on six factors to find the

requisite intention and of those six, four related to the nature of the physical acts of possession. These findings were upheld by the House of Lords which had reversed the Court of Appeal and restored the findings and conclusion of the trial judge.

[27] Lord Hope supports this proposition in the following passage at paragraph 70 of **J A Pye**:

> *Occupation of the land alone is not enough, nor is an intention to occupy which is not put into effect by action. Both aspects must be examined, and each is bound up with the other. But acts of the mind can be, and sometimes can only be, demonstrated by acts of the body. In practice, the best evidence of intention is frequently found in the acts which have taken place. (emphasis added)*

[28] There is additional support from Lord Hutton in **J A Pye** on the importance of the acts being relied on to support the extinction of title claim. At paragraphs 76 and 77, his Lordship quoted liberally from Slade J's judgment which received the further encomium of 'classic':

> *Where the evidence establishes that the person claiming title under the Limitation Act 1980 has occupied the land and made full use of it in the way in which an owner would, I consider that in the normal case he will not have to adduce additional evidence to establish that he had the intention to possess. It is in cases where the acts in relation to the land of a person claiming title by adverse possession are equivocal and are open to more than one interpretation that those acts will be insufficient to establish the intention to possess. But it is different if the actions of the occupier make it clear that he is using the land in the way in which a full owner would and in such a way that the owner is excluded.*
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> *77 The conclusion to be drawn from such acts by an occupier is recognised by Slade J in Powell v McFarlane, at p 472:*
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> *"If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner."*
>
> *And, at p 476:*
>
> *"In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner." In another passage of his judgment at pp 471-472 Slade J explains what is meant by "an intention on his part to ... exclude the true owner":*

> *"What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."*
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> *Lastly, as a reminder to myself in this area of law there is no need for '*an element of aggression, hostility or subterfuge*' (per Lord Hope in **J A Pye** at para 69). The '*right of action is treated as accruing as soon as the land is in the possession of some other person in whose favour the limitation period can run*' (per Lord Hope at paragraph 69). Lord Browne-Wilkinson made it plain that the '*suggestion that the sufficiency of the possession can depend on the intention not of the squatter but of the true owner is heretical and wrong*' (para 45). Lord Hope said* 'important point for present purposes is that it is not necessary to show that there was a deliberate intention to exclude the paper owner or the registered proprietor …. The only intention which has to be demonstrated is an intention to occupy and use the land as one's own*' (para 71).*

[29] All these principles now have to be applied in the context of co-owners

The analysis

[30] The task of Lois is to demonstrate that William extinguished Linnette's title. She has to show the time at which the dispossession began and that it ran for the requisite twelve years. She must show William's factual possession and his intention to possess as if he were the sole owner. There is no doubt that William was in physical possession of the property and so that part of the requirement need not detain us. The focus now is on the requisite intention.

[31] Lois states she met William in 1993 and at that time he was married to Linnette. When she met him he was living alone at the disputed property. She moved in with him in 1995. What this means is that Lois was William's licensee. However, this is not the end of the matter because by all appearances Lois had the free run of the property. She appeared to be treated as the woman of the house. This may be an important consideration concerning William's intention.

[32] From this Lois is saying that Linnette was not in physical occupation of the property and the only person she saw in occupation was William. Inferentially, as well, Lois wishes to say that William and Linnette separated as husband and wife around the time she met William or at the very latest, the time at which she moved into the property in 1995.

[33] The body of evidence shows that William and Linnette were in Canada together at some point. The precise time periods cannot be worked out but there is no doubt that both were in Canada from time to time. In fact William was working in Canada and he retired and eventually returned to Jamaica. It seemed that Linnette would travel between both countries.

[34] The fact that William permitted Lois to move into the house is not necessarily an unequivocal act indicating that from that time forward he had formed the intention to treat the property as his own. It is a common practice in Jamaica for men to move women into the house during the absence of their wives or girlfriends without any intention of regarding themselves as being in exclusive possession. To determine the evidential significance of this act other factor will have to be examined. That will be done later on in this judgment.

[35] Linnette's evidence is that after the marriage to William in 1988 she and William were living at Knollis, Bog Walk, St Catherine. She returned to Canada in 1992. She states that when she left Jamaica in 1992 she and William were still living at Knollis although some of her things were at the disputed property. From this it can be said that Linnette and William lived as husband and wife at Knollis and not at the disputed property for the first four years of the marriage. Under cross examination it emerged that Linnette had never even slept at the disputed property. Indeed she was never a co-owner who took up physical possession of the property throughout her marriage to William despite the fact that William was living at the property since at least 1993, the year he met Lois.

[36] From Linnette's stand point, it appears that William was in Canada at some point between 1988 and 1997 since she says that in 1997 William was in the process of retiring and in fact returned to Jamaica in 1997. It is not clear the precise year William returned Canada (whether it was 1996 or 1997) but Linnette has no doubt that he was there at some point in 1997 and also left to return to Jamaica in 1997.

[37] From Linnette's evidence, after she returned to Canada in 1992, it appears that she was there from that time until sometime in 1994 when she came back to Jamaica. Even on this return she never stayed at the disputed property, though by this time her name was on the title as a joint tenant. Her name was added on December 18, 1989.

[38] Linnette also says that in 1995 she was in Jamaica. So Linnette was in Jamaica for some part of 1994 and part of 1995. She also says that she left Jamaica again in 1995. In summary then, between 1988 and1992, Linnette lived at Knollis. She left in 1992, came back some time in 1994 and left again in 1995.

[39] While Linnette was out of Jamaica between 1992 and 1994, William met Lois in 1993. Lois moved into the disputed property in 1995. From the evidence presented it is more probable that Lois moved in after Linnette returned to Canada in 1995 following Linnette's return to Jamaica in 1994. Lois says that she never met Linnette until 2009. If this is correct, and the court accepts it as correct, this means that William never had his wife living at the disputed property but moved in Lois in 1995 after Linnette returned to Canada.

[40] Linnette testified that Lois began working at the disputed property as domestic assistant after Christine, the previous domestic assistant, had left the employment. Lois has strenuously denied that she was a domestic assistant in the employment of anyone. She says that she was a security guard at Guardsman Limited and was so employed until 1995/1999. Lois does accept that when she met William a domestic assistant was working there but on her account the domestic assistant stopped working at the disputed property around 1995 when she moved in.

[41] Linnette says that the relation with William broke down in 1997/98 because he returned to Jamaica in 1997 and she was still in Canada. If this is correct then this would mean that William would have installed Lois in the house in 1995, went to Canada at some point afterwards, presumably to deal with his retirement process and return to Jamaica in 1997. Inferentially, Linnette did not visit the

disputed property between 1995 when she returned to Canada (on her evidence) and 1997, when William returned to Jamaica. What this means is that for the first decade of the marriage Linnette never took up physical possession but Lois was installed there from 1995. All this is evidence of William's intention regarding the property.

[42] Linnette sought to say that Christine, the first domestic assistant, was still working at the disputed property in 1997/98 when William returned. On close examination of the evidence, Linnette could not properly testify to this since she left for Canada from sometime in 1995 and apparently did not return between 1995 and 1997. Also it will be recalled that she stated that when she left for Canada in 1995 she was still living in Knollis although some of her things, she says, were at the disputed property. The conclusion then is that Linnette's evidence that Christine was working at the property in 1997/98 is unreliable. The better evidence on this point comes from Lois who says that she moved into the property in 1995 and at that time Christine left.

[43] If Christine in fact left from 1995 and Linnette was unaware of this even up to 1997/98, then this may well be an indication of William's state of mind regarding the property. This would suggest that the relationship between William and Linnette had begun to crumble and he felt that he was completely in charge of the property and its operations to such an extent that he did not think it necessary to communicate with Linnette on the point of Christine leaving in 1995 and leaving Linnette in the dark for a further two years. So much in the dark was Linnette on this important development that she, in 1997/98, thought that Christine was still the domestic assistant when in truth Christine had departed from 1995. In effect the normal intimacies between husband and wife who are still together but living apart with the intention of reuniting had disappeared.

[44] On further cross examination it turned out that Linnette's view that Lois was a domestic assistant was based on her own mind's conclusions but without any

supporting external evidence. Linnette testified that Lois was employed by William. It is not clear how she came by this information but that was her belief.

[45] Crucially, she said that her suspicions about the relationship between Lois and William were aroused when each time she called to speak to William and Lois answered, the time lapse between Lois answering and William speaking to her was so short that in her mind he must have been very close to the phone. This calling of the house must have been between the years 1995 and at the very least 1997 when she claims that she turned up at the house unannounced. It appears that the phone was located in the bedroom. According to Linnette, the location of the phone (in the bedroom) and the very short time lapse between Lois answering and William speaking led her to conclude that the relationship between them was more than employer/employee. Linnette states that when pressed on the matter William volunteered that he was conducting Bible study to which she retorted, 'Bible study after twelve midnight!' It was these developments that led to her unannounced arrival, she says, in 1997. It was this trip that removed the scales from her eyes. Linnette says that she found William and Lois in a compromising situation. On this visit to the property, she says that she was never let into the house. The court should point out that Lois refutes this narrative and insists that she did not meet Linnette until 2009. Lois says that Linnette never turned up at the property in 1997.

[46] The court wishes to make the point that what has just been related is not to be seen as gratuitous self-indulgence in salacious details but rather to identify the point in time at which it may be said that William formed the intention to possess the property as if he were the sole owner. This evidence helps because, on Linnette's own evidence, it shows, at very least, how William regarded Lois and it also sheds light on his intention regarding the property.

[47] From this evidence beginning in 1995 right through to Lois' alleged visit in 1997, it appears that William showed an intention to regard the property as his own. He regarded himself as his own man and not a co-owner with Linnette. He did not

refer any household decisions to her. Linnette has not testified to any such exchanges between them. This is consistent with him regarding the property has his and no need to refer to anyone including Lois. Linnette, at one point said that it was she who employed Christine but virtually in the next breadth said that she met Christine on her return. She said that William employed Christine and she approved. The return spoken of here would be her return in 1994 after she had left in 1992. On the question of her approval of the employment of Christine, it seems to this court that it would be more accurate to say that William employed Christine and she found out but did not disapprove.

[48] The court must mention some further evidence on Christine. The court said earlier that Linnette thought that Christine was still working at the house in 1997/98. Lois says quite clear that Christine left the employment in 1995. From what has been said already, this would have been after Linnette left for Canada in 1995. It is Linnette's evidence that when she left in 1995, Christine was still working at the property. This explains why Linnette thought that Christine was still at the house up to 1997/98. She assumed that Christine was still working there. William was making his own decisions about the house and who was employed there.

[49] It also appears that Linnette was in denial regarding the relationship between William and Lois. At some point she found out about it but sought to portray Lois as an employee. When Linnette called on the phone during the period 1995/97 and spoke to Lois she was not speaking to a domestic assistant but to the woman who had replaced or supplanted her in William's affections.

[50] Linnette testified that she has never slept at the disputed property. Even though the court does not accept that she came to the property in 1997 Linnette's evidence on this visit shows clearly that William did not wish her to stay at the property. On her evidence on this visit, he refused to let her into the house. How could this be if William did not intend to regard himself as the sole true owner?

[51] It has been stated that William's first wife's share in the property was bought out. Lois sought to say that William told her that Linnette had nothing to do with the buy-out and that Linnette's name was placed on the property in order to secure the mortgage which he paid for solely. No doubt this was placed before the court to prove William's intention. The court places no reliance on this alleged conversation between William and Lois. It is too self-serving; cannot be tested by cross-examination and has no supporting evidence.

[52] It was noted earlier that the disputed property was transferred to William and Linnette on December 18, 1989. The mortgage was taken out with the National Commercial Bank on February 2, 1990. The death certificate states that William died in 2009 at the age of 80 years. In 1990 William was 61 years old. The sum borrowed was $50,000.00. The mortgage was discharged on September 15, 1992. From the fact of her name on the title Linnette prima facie has a legal and beneficial interest in the property. She alleges that she paid off the mortgage. This paying off of the mortgage does not prevent the operation of the doctrine of extinction of title.

[53] Linnette says that she maintained a presence through her children but the evidence of this is not reliable and therefore not accepted. On the whole, the court preferred the evidence of Lois. The act of seeking to eject Lois from the property comes too late.

Conclusions

[54] The relevant period for examination is 1993 to 2009. William's physical possession of the property is not in dispute. The real issue was when he had the intention to possess the property and treat it as his own. If there was such an intention, when did arise? Did it continue for the twelve year period?

[55] On the evidence presented the court concludes that in 1995 when William invited Lois to live at the property, after Linnette had returned to Canada, he formed the intention to occupy the property as if he were the sole owner. The precise time in

1995 cannot be identified. The manifestation of this is the termination of Christine's services when Lois moved into the house and his subsequent relationship with Lois which Linnette gleaned from the telephone calls she made to the property between 1995/97. This finding is supported by the fact that on Linnette's evidence the intimacies that couples who are still functioning as a couple would share regarding domestic arrangements were absent. In addition, at no time did Linnette ever sleep at the property. On all her visits to Jamaica when William was at the house she never slept there. Even in 1997 when she claimed that she went to the house she was not permitted to sleep there.

[56] This intention continued right up to the time of William's death in 2009. The act of seeking to recover possession from Lois comes too late. The extinction of title claim has been established. This means that the Estate of William Walter Hawkins is entitled to the entire legal and equitable interest in the disputed property. The declaration that Linnette holds the property on resulting trust for the estate is refused. There is no need for this declaration in light of the first declaration.

[57] On the question of the declaration that the home is the family home, it is important to note that the home cannot be the family home of William and Lois before the extinction of Linnette's title for the simple reason that until the title is extinguished the property does not fall within the definition of family home in section 2 (1) of the Property (Rights of Spouse) Act. The declaration of the extinction of title means that from 2008 the home was now solely owned by William.

[58] When judgment was delivered orally and in an earlier written judgment the court had said that the disputed property became the family home from 2007. On further reflection the court withdraws this finding because of the unsatisfactory nature of the proof of the marriage of William and Lois. The court is not saying that they are not married. What the court is saying is that all that has been placed before the court is Lois' assertion and no appropriate documentary evidence in

support. No decree absolute was exhibited. No marriage certificate was exhibited. The bridal copy is not a marriage certificate. If William and Lois are not married then Lois would be relying on the five-year-living together principle. For this principle to be invoked, there would have to be proof that William was in fact a single man in law and not a married man living as if he were single. There is a dispute over the date of the divorce. Lois is saying that decree absolute was granted in Jamaica in 1999. Linnette is saying that the divorce took place under Canadian law in 2007. Whether the divorce was in 1999 or 2007 Linnette's title was not extinguished until 2008. William died in 2009 which means that the five-year period would not have passed that would enable the home to become the family home since until the extinction the property would not be wholly owned by William.

[59] On the other hand if William and Lois were married in 1999 then the home would become the family home from 2008. The effect of all that has been said is that the court declines to grant the declaration that the disputed property was the family home.

[60] The court has said previously that the title was extinguished in 2007. However, having regard to lack of precision regarding the movements of William and Linnette the court has decided to use January 1, 1996 to January 1, 2008 as the twelve year period. The law requires twelve years and not approximately twelve years for the extinction of title principle to have full effect. For this to happen the evidence needs to say with some degree of precision the month, in any particular year, when it is said that twelve years began. In this case it is impossible to say when in 1995 the twelve-year period began. It has turned out that since William lived for longer than the twelve years beginning from January 1, 1996 the required time has elapsed. In another case, the counting may become crucial.

[61] In light of these changes the court declines to grant the other declarations sought.

[62] From 2008 the home became the family home. It is the court's understanding that William did not leave a will. If that is the case, then the property is now part of the Estate of William Hawkins and is to be dealt with in accordance with the Intestate Estates and Property Charges Act. Costs to the Estate of William Walters Hawkins to be agreed or taxed.