



[2023] JMSC Civ. 17

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2014HCV00833

BETWEEN **DELPHINE ALLEN** **CLAIMANT**
AND **THE OCCUPANT OF LOT 6 TANA AVENUE,** **DEFENDANTS**
NEWLANDS, ST. CATHERINE

IN OPEN COURT

Mrs. Tamara Riley – Dunn instructed by Nelson Brown Guy and Francis for the Claimant
Ms. Althea Grant for the Defendants

Heard: January 9, 2023 and February 10, 2023

Section 3 of The Limitation of Actions Act – Sections 68 and 70 of The Registration of Titles Act – Proprietary Estoppel – Whether the defendants are entitled to compensation for structures erected on leased lands

CARR, J

Introduction

[1] The Claimant, Ms. Delphine Allen, is the owner of all that parcel of land part of Rosemary Castle in the parish of Saint Catherine containing 2.5579 hectares as appears by the plan thereof and being the land comprised in the Certificate of Title registered at Volume 1448 Folio 978. On February 19, 2014 she filed a fixed date claim form seeking to recover possession from the unlawful occupiers or trespassers who were on the property. At the time of filing she was unaware of the proper names of all the persons on the land.

[2] The claim was defended by twenty – nine persons who alleged that Ms. Allen obtained her title by fraud, and that they had been in undisturbed occupation of the land for over twelve years. In the event that the court found that Ms. Allen was the lawful registered owner of the property, they counter claimed for compensation for houses which they constructed on the land.

Background

[3] The fixed date claim form was converted to a claim form and witness statements were filed on behalf of twenty – two (22) out of the twenty – nine (29) occupants who originally defended the claim. There was no indication as to the status of the remaining seven persons. An order for recovery of possession is therefore made against,

1. Mark Miles
2. Maureen Walker
3. Karen Chambers-Robinson
4. Fay Salmon
5. Ronald Hardie
6. Alrick Morgan
7. Vinton Edwards,

as they have provided no evidence in support of the their defence and counter claim.

[4] At the commencement of the trial counsel, Ms. Grant, indicated that two of the defendants, namely Vivienne Ulanda Crossdale Morris and Omar Morris, were deceased. Due to the late notification from her clients she was unable to file an application to appoint a representative to continue the action. The claim against them is therefore stayed.

[5] There were four persons who filed witness statements but did not attend the hearing of the matter. Another person, Mr. Craig Brown, gave a witness statement on behalf of his mother, however, he too did not attend the trial of the claim. The

statements were therefore not agreed and did not form a part of the evidence before the court. As such, an order for recovery of possession is made against;

1. Lorna Lindo
2. Myrtle Hardy (witness statement filed by Craig Brown)
3. Lorraine Thompson
4. Clifton Palmer
5. Sandra Marie Robinson

[6] Ms. Allen and her nephew Troy James provided witness statements in support of the claim. The statements were accepted as their evidence in chief and they were both cross examined. The witness statements of the remaining defendants were admitted into evidence by agreement and there was no cross-examination. They are;

1. Orinthia Burnett
2. Daina Eleisa Moulton McLeod
3. Luckal Myers
4. Patrick Gyles
5. Barrington Fenderson
6. Patrick Uriah Davidson
7. Neville Burnett
8. Marlene Malcolm
9. Paulette Bernice Bryan
10. Lucilda Codling
11. Petrona Victoria Morgan
12. Fay Wynter
13. Sheila Jennifer Davis
14. Verona Ebanks
15. Marcia Bolt

- [7] The defendants also relied on the evidence contained in the witness statement of Mr. Julian McDonald. Mr. McDonald provided valuations in support of their claim for compensation.
- [8] Counsel also agreed all the documents listed in the list of documents filed on behalf of the claimant and the defendant.

Issues

- [9] a) Whether the defendants can rely on the Limitation of Actions Act (**LOAA**) in defence of the claim for recovery of possession.
- b) Whether Ms. Allen's title was obtained by fraudulent misrepresentations to the Office of the Registrar of Titles.
- c) Whether the 15 remaining defendants are entitled to compensation for the structures which were erected to the disputed property.

Discussion

Whether the defendants can rely on the LOAA

- [10] It is a well-established principle of law that a registered title is proof of the particulars of ownership which is contained therein. By virtue of Section 68 of the Registration of Titles Act (**RTA**), a registered title is indefeasible. The provision is set out below;

"No certificate of title registered and granted under this Act shall 'be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, subject to the subsequent operation of any statute of

limitations, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate or interest in, or power to appoint or dispose of the land therein described is seised or possessed of such estate or interest or has such power.”

- [11] Ms. Allen produced her Certificate of Title to the court as a part of her witness statement. The Certificate of Title indicates that Delphine Allen is now the proprietor of an estate in fee simple subject to the incumbrances noted on the title. The property was described as St. Catherine, Rosemary Castle, 2.5579 Hectares. A surveyor's diagram was attached.
- [12] The land has been referred to as Tana Lane and is described in the claim as Lot 6. Ms. Allen stated that the land stretches down the lane and there are several structures which have been erected by persons over the years.
- [13] The evidence of the defendants as to their occupation and possession of the land, although varied in terms of the date of entry, are all similar in nature. It was their collective evidence that Ms. Allen's father (Quintin Allen) was the purported owner of the land from some time in or around 1969. The majority of them, whether by themselves or their relatives, entered into lease agreements with Mr. Allen and built structures on the land. The remaining persons purchased houses from others and entered into lease agreements with Ms. Shirley Allen or Mr. Derrick Allen, the siblings of Delphine Allen. Sometime in 2008 they received Notices to Quit from persons representing Ms. Delphine Allen and the matter was before the Saint Catherine Resident Magistrate's Court (as it was then known). No order was made for recovery of possession at that time. Subsequently they were told of this claim and of the registered title of Ms. Allen.
- [14] In their witness statements some of the defendants have averred that they were not served with a notice to quit. This was never pleaded in their defence and as such cannot be raised at this stage. I find and accept that they were all aware of

the Notice to quit, they are still residing on the premises, and they have not paid any rent since 2008.

- [15] It is the argument of counsel, Ms. Grant, that the defendants have an equitable interest in the land because they have been in occupation for over 40 years.
- [16] The protection of a proprietor with a registered title is not absolute. The title can be challenged on the grounds of fraud, a previous registered title or by a claim in equity which may arise as a result of a statute of limitation¹. In this case the applicable statute of limitation is the LOAA.
- [17] The LOAA provides a defence to a claim for recovery of possession. However, it is not applicable until after the land has been brought under the operation of the RTA. Section 70 of the RTA states;

“Notwithstanding the existence in any other person rights of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of

¹ Gardner and Others v. Edward Lewis [1998] UKPC 26

*parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser: **Provided always that the land which shall be included in any certificate of title or registered instrument shall be deemed to be subject to the reservations, exceptions, conditions and powers (if any), contained in the patent thereof, and to any rights acquired over such land since the same was brought under the operation of this Act under any statute of limitations, and to any public rights of way, and to any easement acquired by enjoyment or user, or subsisting over or upon or affecting such land, and to any unpaid rates and assessments, quit rents or taxes, that have accrued due since the land was brought under the operation of this Act, and also to the interests of any tenant of the land for a term not exceeding three years, notwithstanding the same respectively may not be specially notified as incumbrances in such certificate or instrument.***

- [18] The reference in the section which has been highlighted suggests that the rights to be reserved by the operation of the statute of limitations can only be applied “*since the land was brought under the operation of the act*”. There is no evidence before this court that supports a contention that the land was previously registered, neither was there evidence of a transfer or of a parent title. In the circumstances it is accepted that Ms. Allen obtained her title on April 5, 2011. Prior to this the land was unregistered and was owned by her father.
- [19] The LOAA provides that an owner of land may not re-enter to recover possession of lands after twelve years from the date when that right was first established. The section is set out below;

“No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.”²

[20] In this case, Ms. Allen, indicated in her evidence that Notices to Quit were served on the defendants on June 18, 2013. The claim before this court was filed on February 19, 2014.

[21] Ms. Allen was not in this case seeking to claim the lands by virtue of her interest which she acquired through her father. She has filed this claim based entirely on the registered title that was obtained in 2011. The statutory defence is therefore not available to the defendants as Ms. Allen commenced her claim within twelve years of her legal right to do so.

Whether Ms. Allen’s title was obtained by fraudulent misrepresentations to the Office of the Registrar of Titles

[22] A claim for fraud must be specifically pleaded and proved. The defendants outlined the particulars of fraudulent misrepresentations as set out below;

- Representing that she remained in open, quiet, continuous possession of the said land
- Representing to the Registrar of Titles that she has been exercising all rights of ownership over the said land

² Section 3 of The Limitations of Actions Act

- Representing that she is the owner of an estate in fee simple of the said lands
- Representing that the land is occupied by her
- Omitting to disclose in her application for Title that other persons were in active occupation of the land.

[23] Counsel Ms. Grant submitted that the court should enquire into how Ms. Allen obtained her certificate of title. She argued that it must have been through either material non-disclosure or by virtue of misrepresentations. Reference was made to the surveyor's diagram which is attached to the title. It was submitted that there was a noticeable absence of the houses on the property when one looks at the document. At the time the survey was conducted there were several houses belonging to the defendants there and yet, this was never noted on the diagram. It was also suggested that the defendants would have objected to the survey had they been given notice of the date it was to be conducted.

[24] Mrs. Riley Dunn in her submissions asked the court to find that there was no evidence of any non-disclosure or misrepresentation on the part of Ms. Allen. The defendants cannot merely speculate as to the information which was given to the Registrar of Titles.

[25] There was no document from the Titles Office which was admitted into evidence as an exhibit. There was therefore no evidence outlining any representations made by Ms. Allen to the Registrar of Titles in the filing of her application for first registration. The court cannot speculate as to what was stated, neither can it be inferred from the evidence of the defendants that there must have been misinformation.

[26] Apart from the pleadings, and the allegations made in the witness statements of the defendants, there is nothing which has been established to specifically prove a claim of fraud on the part of Ms. Allen.

Whether the 15 remaining defendants are entitled to compensation for the structures which were erected to the disputed property

The evidence

[27] Delphine Allen gave evidence that her father Quintin Allen was the owner of the lands in dispute. She stated that some of the defendants were tenants of her father and that since her father's death she has tried to regularize their tenancy. The property was managed by herself along with her siblings, namely, Shirley Allen, Hermine Allen and Derrick Allen. Ms. Allen indicates that lease arrangements were made with several persons throughout the years.

[28] It is her evidence that the residents were permitted to build structures on the land by her siblings. The tenants were aware of the fact that upon the termination of their lease they would be required to vacate the premises and take their structures with them. As a result, she encouraged the residents not to build permanent structures.

[29] In an attempt to formalize arrangements Ms. Allen met with the residents in 2008 and told them that she would be utilizing written lease agreements. She also stated that they were told that there would be new rules which she would be implementing and enforcing. The most relevant of which are as follows;

1. *Absolutely no occupant is allowed to build concrete structures on the land.*
2. *Those who have already built concrete structures on the land may, at the end of their tenancy, remove all windows and doors and go.*
3. *That I will not buy their houses on the termination of the tenancy.*
4. *No person should have more than one building on the spot leased.*

- [30]** Ms. Allen has asked the court to refuse the claim for compensation as the defendants constructed concrete buildings on the land even after they were told not to do so.
- [31]** All the defendants indicated in their witness statements that the construction of their buildings was done in plain view of all and they were never prevented from doing so.
- [32]** Orinthia Burnett stated that she lives at 13 Tana Lane. She has been living there since 1973. The land was leased by her husband and herself from Mr. Allen. They built a board house on the land and since then she has expanded that house which is now made up of concrete. The home is presently valued at \$6,200,000.00 and the estimated age of the building is 40 years.
- [33]** Daina Moulton McLeod gave evidence that she moved to Tana Lane and rented a house from Mr. and Mrs. Lindo in 2001. She and her husband did repairs to the structure in order to make it habitable. That was 14 Tana Lane. Since then she entered into a lease agreement with Ms. Shirley Allen the daughter of Quintin Allen for the premises known as 14A Tana Lane. The house is now valued at \$2,100,000.00. The estimated age of the building was 44 years.
- [34]** Luckal Myers stated that he entered into a lease agreement with Shirley Allen, in respect of the land only, in or about 1999. He constructed a board house which is now valued at \$1,700,000.00. At the time of the valuation in 2014, the building was approximately 15 years. The valuator noted that the building was being renovated and extended at the time.
- [35]** Patrick Gyles in his evidence stated that his grandfather entered into a yearly lease agreement with Quintin Allen in respect of the land only. His grandfather constructed a board and concrete structure in 1976. It is to be noted that Mr. Gyles was born on February 23, 1971. His evidence as to the construction of the house must have been based on what he was told. His grandfather died in 2003 and since then he has been in occupation of the house which is located at 11B Tana

Lane. He admits that he paid a yearly lease to Shirley Allen following the death of his grandfather. He made improvements to the house and it is now valued at \$2,300,000.00. The valuator estimates the age of the building as 21 years which would mean that it was constructed sometime in 1993.

[36] Barrington Fenderson moved to 22B Tana Lane with his sister in 1978. He leased the land from Mr. Allen and constructed a board and concrete house. He made improvements on the structure over the years and the house is now valued at \$2,800,000.00. The valuator puts the estimated age of the building at 44 years.

[37] Patrick Davidson stated that he and his parents moved to 13 A Tana Lane sometime in January 1981. His parents bought the structure that was on the land from a man and they paid lease for the land to Ms. Shirley Allen. In 1998 the original house was destroyed by fire. He constructed a concrete structure in 1999 which he presently occupies with his family. His property on the land is valued at \$6,700,000.00. The buildings owned by Mr. Davidson were estimated to be between 15 and 33 years old.

[38] Neville Burnett went to live at 20 Tana Lane with his parents in September 1974. His parents paid a yearly lease to Mr. Allen and constructed a concrete and board house on the land. He also constructed a second house on the land in or around 1992 and did repairs to the first house. The buildings are valued at \$3,600,000.00. The valuator reported that there were three buildings on the land belonging to Mr. Burnett. The main house was approximately 41 years old but the other two buildings were 15 years old.

[39] Marlene Malcolm went to live at 1A Tana Lane in or about 2005. She entered into a yearly lease agreement with Shirley Allen for the land only. She constructed a board house on the land which is now valued at \$1,200,000.00. Ms. Malcolm's structure was estimated as being 9 years old.

[40] Paulette Bryan went to live at 1A Tana Lane sometime in or around 2004. She entered into a yearly lease with Shirley Allen for the land only and she constructed

a board house on the building. Her property is now valued at \$2,600,000.00. The estimated age of this building is that of 10 years.

[41] Lucilda Codling purchased a house at 12 Tana Lane between January 29, 1994 and March 25, 1995. The land was leased from Derrick Allen. After the death of Derrick Allen, she continued paying the amount on the lease to Shirley Allen. She improved on the structure and the property is now valued at \$2,200,000.00. The age of the building was estimated at 21 years.

[42] Petrona Morgan went to live at 9A Tana Lane in January 1996. She along with Ms. Vie Morgan paid a yearly lease to Shirley Allen. At the time they moved there the only thing on the land was a concrete foundation. They constructed a one-bedroom house. Improvements were made to the house and it is now a board and concrete structure. There were two buildings noted by the valuator with an estimated age of between 15 and 18 years. The properties are valued at \$5,900,000.00.

[43] Fay Wynter moved to 25 Tana Lane with her parents in 1975. Her parents purchased the house which was at the time a board structure from Mr. Bonner. They entered into a yearly lease with Quintin Allen. After Mr. Allen's death they paid the lease to other members of the Allen family. Her parents died between 1986 and 1987. The estimated age of the building is 39 years. She made improvements to the house which is now valued at \$2,700,00.00.

[44] Sheila Davis moved to 17 Tana Lane in 1980. She moved into a concrete and board house which belonged to her child's father. She started to pay the lease on the property in 1989 to Mr. Allen's family members. She made improvements to the house which is now valued at \$5,300,000.00. The valuator noted two buildings on behalf of Ms. Davis they are estimated to be between 15 and 34 years old.

[45] Verona Ebanks has been living at 7B Tana Lane since 1994. She was the common law spouse of Owen Parchment, who is the son of Shirley Allen. They were given permission to live on the land. She constructed a board and concrete house. Mr.

Parchment vacated the house in 2004. Ms. Ebanks states that she made several improvements to the house and it is now valued at \$2,600,000.00, the building's age is estimated at 17 years.

[46] Marcia Bolt started her residence at 10 Tana Lane sometime in 1997. She rented a section of the house on the land from Mr. Wilfred Jones. He left her the house in his will and she took over the lease which was paid to Shirley Allen. Since then she has made improvements to the house and it is now valued at \$1,400,000.00. The building was estimated to be about 17 years old.

[47] The valuator, Mr. McDonald, conducted his valuations in 2014, his evidence is that the title to the land was in the name of the Claimant and he noted that the diagram attached did not show the houses on the land. His inspection revealed houses which were mostly in a poor state of repairs. It was not clear from his evidence whether the structures were fixtures or chattel. He stated that he saw fowl coops and outside bathrooms in respect of some of the defendants and that he did not take these into account. He also acknowledged that based on the plan all the defendants were on lands contained in the certificate of title.

Submissions on behalf of the Claimant and the Defendant

[48] Mrs. Riley Dunn in her written submissions to the court asked the court to accept what she termed as the undisputed evidence. Firstly, the defendants all agree and aver in their witness statements that they entered upon the lands at Tana Lane under a lease agreement with a member of the Allen family. There was no misunderstanding as to their status. They were tenants. Secondly, from the outset the defendants were told not to build any permanent structures on the land. This she said was buttressed by the evidence of some of the defendants who stated that their original structures were made of wood.

[49] She has asked the court to find that the defendants acted to their detriment in constructing permanent structures on the land. The structures, she contends, now

form a part of the land and the defendants are not entitled to any compensation. She relied on the case of **Mitchell v. Cowie**³.

[50] Ms. Grant submitted that the defendants were permitted to construct permanent structures on the land by the claimant's relatives and or agents. They did so openly and in plain view of all. In the circumstances, the court must grant them compensation for the structures.

Discussion

[51] The case of **Mitchell v. Cowie** was the only authority presented on this issue. Ms. Grant did not provide any case law or any text or other legal authority in support of her position that the defendants are entitled to compensation.

[52] In **Mitchell**, the judgment was delivered by Wooding, C.J. who referred to the judgment of Blackburn, J in the case of *Holland v. Hodgson*, and stated;

“There is no doubt that the general maxim of the law is that what is annexed to the land becomes part of the land; but it is very difficult, if not impossible, to say with precision what constitutes an annexation sufficient for this purpose. It is a question which must depend on the circumstances of each case, and mainly on two circumstances, as indicating the intention vis., the degree of the annexation and the object of the annexation.”⁴

[53] That case turned on the issue of whether or not the structure affixed to the land was a chattel or a fixture. If it was a chattel, then the tenants could remove it. If it was a fixture it would remain with the land. The onus is on the person claiming it to be a chattel to prove that it is in fact so. In this case counsel Ms. Grant has not posited that the structures are chattel. She has instead argued that Ms. Allen or

³ (1964) 7 WIR 118

⁴ *Ibid.* p. 120

her agents permitted the defendants to construct buildings on the land and as a result she is obliged to compensate them.

[54] Although Ms. Grant has not specifically pleaded proprietary estoppel that is the essence of her counter claim for compensation. The doctrine of proprietary estoppel is grounded in equity. The general rule is that a permanent fixture on land belongs to the land. If a tenant knowingly constructs or does improvement to land which he or she knows is not theirs, they cannot seek to be compensated for it. However, if the owner or landlord whether by themselves or through their agents acquiesce to the improvements, equity will intervene to stop the owner from benefitting from those improvements.

[55] In the Court of Appeal decision of **Caren Cranston v. Tamazine Samuels and Gairy Toorie**⁵ Edwards, JA in delivering the decision of the court reviewed the law and cases on this equitable doctrine. At paragraph 61 she quoted the case of **Crabb v. Arun District Council**⁶,

“The Master of the Rolls described the operation of the equity, in the relevant portion of which he says: “Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights knowing or intending that the other will act on that belief - and he does so act, that again will raise an equity in favour of the other: and it is for a Court of Equity to say in what way the equity may be satisfied. The [cases] show that this equity does not depend on agreement but on words or conduct.”

[56] In the judgment delivered by Morrison, JA in the case of **Annie Lopez v. Dawkins Brown and Glen Brown**⁷ it was held that;

⁵ [2019] JMCA Civ. 42

⁶

⁷ [2015] JMCA Civ. 6 para. 73

“Although proprietary estoppel is not based on contract, it is therefore always necessary to have regard to the nature and terms of any agreement between the parties. In the absence of agreement, the important starting point must be, firstly, whether there has been a representation (or assurance) by the landowner, capable of giving rise to an expectation that is not speculative, that she will not insist on her strict legal rights. Secondly, there must be evidence of reliance on the representation (or change of position on the strength of it) by the person claiming the equity. And, thirdly, some resultant detriment (or disadvantage) to that person arising from the unconscionable withdrawal of the representation by the landowner must be shown. But unconscionability, standing by itself, without the precedent elements of an estoppel, will not give rise to a cause of action.”

[57] Each case must turn on its own facts. The defendants would have to show that either Mr. Allen or any other member of the Allen family represented or assured them that they would not insist on their legal rights in respect of the property. The evidence of Ms. Allen is that the defendants were permitted by herself and her agents to build structures on the land which they would take with them at the end of their tenancy. That evidence was supported by the witness statement of her nephew and agent Troy James.

[58] It is pellucid that the remaining defendants all had lease agreements with a member of the Allen family. The lease agreement was in respect of the land only. As such, the tenants would need to construct houses on that land in order to occupy it. I find and accept that initially the arrangement was for the houses to be constructed from materials that could be removed. This is so based on the evidence of the majority of the defendants who entered on to the land around 1969. They all indicated that their houses were made of board. Over the years, as the tenants changed, the lease agreement remained the same. The lease was in respect of the land only. The houses which were “renovated” were made up of

wood and concrete. This gives credence to the evidence of Ms. Allen that at all times the defendants knew that the land did not belong to them and that they ought not to construct permanent structures.

[59] If this was not enough to make it clear that they had no interest in the land, the actions of Ms. Allen in 2008 put it beyond dispute. At a meeting with the tenants Ms. Allen advised them that they were to cease building as she was now the owner of the land. The defendants were also put on notice of Ms. Allen's intention to reclaim her property by the court proceedings in the St. Catherine Resident Magistrate's Court.

[60] Further, there is evidence before the court in the form of lease agreements entered into in 2008 and 2010 where the parties agreed that in the event they were to vacate the premises they would remove their structures without any damage to the land. The terms of the agreement in 2008 are different from those set out in 2010 however, the essence of it is the same.

[61] The persons who signed in 2008 are;

1. Daina Moulton McLeod
2. Luckal Myers
3. Patrick Davidson
4. Marlene Malcolm
5. Paulette Bryan
6. Lucilda Codling
7. Petrona Morgan
8. Verona Ebanks.

[62] The 2008 agreement contained a notice which was attached. The relevant section of the notice outlined;

"it is also stated that if you are leaving the land and you have a house that you are unable to move off the land and that house is for sale,

first choice should be given to the land owner or a family member of the land owner to purchase such house.

If land owner or their family member is unable to purchase such house with written agreement from him/her the new owner should sign a lease agreement with said land owner at closing.

If there no agreement is reach between the lessee and the land owner the lessee should pay his/her lease or vacate the property and take their building without any damage to the land.”

It is clear from the terms of the agreement that the defendants were to remove their structures once they left the land.

- [63]** In 2010, Daina Moulton McLeod, Neville Burnett, Petronia Morgan and Marcia Bolt signed lease agreements the relevant sections of which are set out below;

“It is also stated that if you are leaving the land and you have a house that you are unable to move you should take your windows and doors and go.

Land owner will not (buy your house). Therefore you should always build a house that you can take when leaving the property.”

- [64]** Upon an analysis of the evidence I find and accept that the defendants entered into lease agreements in respect of the land only. I find that the arrangement was for the lessees to lease the land and construct movable structures. In the event that they were leaving the land they could sell their structures to other persons, and those persons would now become lessees. If they were unable to sell their structures they would dismantle them and leave.

- [65]** The terms of the lease agreement as set out in 2008 are in my view a formalization of the oral arrangements made with the defendants prior to control being ceded to Ms. Allen.

[66] I find and accept that the defendants were never given any assurance, nor was any representation made to them, to lead them to believe that the Allen's were not enforcing their legal rights over the property. The oral lease agreement stood as an enforceable legal right, the formalization of that agreement in 2008 and onwards was evidence of the strict enforcement of those rights.

[67] In the circumstances the terms of the lease agreement ought to be enforced. The remaining defendants have not paid their lease in accordance with their agreements whether oral or in writing. They are therefore in breach of that agreement and Ms. Allen is entitled to recover possession of her property. The structures are to be dismantled and they are to vacate the premises without causing any damage to the land.

Disposition

[68] The situation is an unfortunate one and, although I am sympathetic to the plight of the defendants, I must also consider the rights of Ms. Allen and the length of time this matter has been before the court.

[69] Given the nature of the task that is required I cannot accede to Counsel, Mrs. Riley Dunn's, request for a forthwith order. I am minded to give the 15 remaining defendants six (6) months to have their structures removed and to quit and deliver up possession.

Orders:

1. Judgment is entered on behalf of the Claimant.
2. The claim is stayed against Vivienne Ulanda Crossdale Morris and Omar Morris pending the appointment of a legal representative to continue the proceedings.
3. Mark Miles, Maureen Walker, Karen Chambers Robinson, Fay Salmon, Ronald Hardie, Alrick Morgan, Vinton Edwards, Lorna Lindo, Myrtle Hardy, Lorraine Thompson, Clifton Palmer and Sandra Marie Robinson are to quit and deliver up possession of ALL THAT parcel of land part of ROSEMARY CASTLE in the

parish of SAINT CATHERINE containing 2.5579 hectares as appears by the Plan thereof and being land comprised in the Certificate of Title registered at Volume 1448 Folio 978 forthwith.

4. Orinthia Morris, Daina Eleisa Moulton McLeod, Luckal Myers, Patrick Gyles, Barrington Fenderson, Patrick Uriah Davidson, Neville Burnett, Marlene Malcolm, Paulette Bernice Bryan, Lucilda Codling, Petrona Victoria Morgan, Fay Wynter, Sheila Jennifer Davis, Verona Ebanks, Marcia Bolt are to quit and deliver up possession of ALL THAT parcel of land part of ROSEMARY CASTLE in the parish of SAINT CATHERINE containing 2.5579 hectares as appears by the Plan thereof and being land comprised in the Certificate of Title registered at Volume 1448 Folio 978 within six (6) months of the date of this order, that is by August 10, 2023.
5. Costs to the Claimant to be agreed or taxed.