

Heard: March 18, 19, 20, 21 & November 28, 2024

Land – Whether beneficial co-owner can dispossess registered proprietor who is co-owner – Co-owner executrix of unadministered estate – Whether wife of deceased co-owner is licensee of paper owner – Wife derives possession from husband – Joint occupation and possession entitles wife to possessory title against registered co-owner – Whether paper owner has standi to bring claim against wife for recovery of possession after husband dies

WINT- BLAIR, J

The Claim

- [1] At the outset, I wish to respectfully state that having read and considered all of the evidence and the submissions presented by both sides, if no specific mention of an item of evidence or point raised in submissions is reproduced here, it is no indication of a failure to appreciate or a decision to ignore it, rather the entire case has been given due consideration and this decision attempts instead to be issue-based.
- [2] On December 22, 2022, the claimants filed an Amended Claim Form and Amended Particulars of Claim against the defendant seeking the following orders:
1. A Declaration that the Claimants are entitled by way of adverse possession to the entire legal and beneficial interest in all that parcel of land Part of 80 Molynes Road in the parish of St. Andrew being the land comprised in the Certificate of Title registered at Volume 1260 Folio 14 of the Register Book of Titles (the "property").
 2. A Declaration that the Defendant is barred, pursuant to the provisions of the Limitation of Actions Act, from pursuing any action or claim against any person who is beneficially entitled to the property.
 3. Alternatively, a Declaration that the Claimants are entitled by way of proprietary estoppel to the entire legal and beneficial interest in the property.
 4. An Injunction restraining the Defendant from taking possession or otherwise interfering with the property.

5. An Order directing the Registrar of Titles to cancel the Certificate of Title registered at Volume 1260 Folio 14 of the Register Book of Titles and to issue a new Certificate of Title in duplicate in the name of the first claimant Georgia Campbell-Clarke, Hairdresser of 22 Mapleleaf Avenue, Kingston 10.
6. Further and in the alternative, a Declaration that the first claimant has a 50% beneficial interest in the property by virtue of the provisions of the Last Will and Testament of Ms Lucille Moore dated July 10, 1989.
7. Costs.
8. Such further and/ or other relief as this Honourable Court deems just.

[3] The defendant filed an Amended Defence and Counterclaim¹ claiming that Mr. Lancelot Clarke (“Mr Clarke”) has lived at the property since 2001 with the knowledge that he and the defendant were its beneficial owners. Mr. Clarke occupied the property with the first claimant, who was a licensee. The defendant was aware of and agreed to Mr. Clarke renting sections of the subject property. The defendant visited the subject property almost every Saturday. She had an understanding with Mr. Clarke that she would pay property taxes and that he would take care of maintenance, repairs and upkeep. The defendant has made financial contributions to the subject property by paying taxes, insurance and discharging the mortgage and she had never given up her interest in it.

[4] The defendant counterclaims for the following relief:

1. A declaration that the defendant being the sole registered proprietor is legally entitled to all that parcel of land part of 80 Molynees Road in the parish of St Andrew being the land comprised in Certificate of Title registered at Volume 1260 Folio 14 of the Register Book of Titles.
2. Recovery of possession of all that parcel of land part of 80 Molynees Road in the parish of St Andrew being the land comprised in Certificate of Title registered at Volume 1260 Folio 14 of the Register Book of Titles.
3. All rent proceeds received from renting all that parcel of land part of 80 Molynees Road in the parish of St Andrew being the land comprised in

¹ January 6, 2023

Certificate of Title registered at Volume 1260 Folio 14 of the Register Book of Titles since the death of the defendant's brother on October 18, 2021.

4. Further and in the alternative, a declaration that the defendant has a greater beneficial interest in the property than the first claimant by virtue of her financial contributions to the property.
 5. Costs.
 6. Such further and other relief as this Honourable Court deems just.
- [5] It was stated at the outset by King's Counsel that the defendant took no issue with the second claimant's right to a fifty-percent share in the property but disputed that the first claimant is entitled to a one hundred percent share.
- [6] It is also noted that there were significant amounts of hearsay in the witness statement of the claimant, they had not been edited before trial as they ought to have been. It is therefore the admissible portions which have been set down and relied upon in this decision,

The Evidence

Georgia Campbell-Clarke

- [7] The first claimant is the widow of the late Mr Clarke. She filed this claim on behalf of herself and the estate of her husband based on the use, occupation and investment in all that parcel of land part of 80 Molyne's Road in the parish of St. Andrew being the land comprised in Certificate of Title registered at Volume 1260 Folio 14 of the Register book of Titles ("the property") from March 2003 to the death of Mr Clarke on October 7, 2021 (the "relevant period"). The property was originally owned by the late Lucille Moore ("Ms Moore.") Ms Moore is the mother of Mr Clarke and the defendant. Ms Moore died testate in 1989.
- [8] The defendant, Margot Francis, is the younger sister of Mr Clarke. She, along with Ms. Ida May Chevannes ("Ms Chevannes"), are noted on the Certificate of Title to the Property as the joint proprietors in fee simple. Ms Chevannes died on August

12, 2005, and her death is noted on the said Certificate of Title. The defendant is the sole registered owner of the property.

- [9]** The first claimant and Mr Clarke have both occupied the property since 2003. Upon the death of Mr Clarke, the defendant began taking steps to evict the first claimant. The evidence of the first claimant was that she met Mr Clarke in 2002, and they developed a romantic relationship. When she visited him at the property, there was little furniture or houseware. There was nothing to sit down on in the living room. She knew that there was discord between the defendant and Mr Clarke.
- [10]** By the beginning of 2003, Mr Clarke and the first claimant became serious about their relationship. She always believed that the property belonged to Mr Clarke as this is what he told her, and she had no reason to doubt him based on what she observed when she visited the property. She agreed to move in with Mr Clarke on the basis that they were going to make a home and raise their family together and that they would share the property together as co-owners and life partners.
- [11]** In March 2003, the first claimant and her son moved into the property to live with Mr Clarke. She brought beds, chairs, dining room items, a breakfront, bathroom items, kitchen items, a washing machine, linen and many other things at her expense. No one questioned her right to live in the property with Mr Clarke or raised any concerns. They lived as man and wife and married on December 2, 2011.
- [12]** At the time when the first claimant moved in, she did not know the defendant personally. The only people she had met were Mr Clarke's 'Aunty Ida' (Ms. Chevannes) and Mr Clarke's Uncle Lloyd. Mr Clarke and the defendant did not have a good relationship. He harboured resentment towards his sister after an incident in the 1990s where he had travelled to England with the hopes of living there and was sent back to Jamaica after a document written by the defendant was discovered by 'border control' suggesting that Mr Clarke did not intend to return to Jamaica.

- [13]** Towards the end of 2003, the first claimant invited the defendant to visit the property so that Mr Clarke could make peace with his sister. She searched through his phone and invited the defendant to come to see her brother. She did not like the fact that the two were not speaking to each other and had not done so for years. The defendant accepted her invitation and she and Mr Clarke had a talk on the verandah and hugged at the end. In 2004, the first claimant planned a 40th surprise birthday party for Mr Clarke at the property and invited family and friends. She invited the defendant and ensured that she attended.
- [14]** The first claimant stated that the relationship between Mr Clarke and the defendant never really got off the ground as she had wanted after the surprise party. The defendant never returned to the property and if she had an event at her house, the first claimant would have to bribe Mr Clarke to go. Their relationship soured again after the funeral of Mr Jackson, a family friend. The defendant said that she did not approve of the first claimant or the relationship she had with Mr Clarke and that Mr Clarke could do better for himself.
- [15]** The first claimant gave evidence that Mr Clarke was a loving and supportive husband. However, he did not contribute much financially. For the duration of their union, she was both the homemaker and breadwinner. Mr Clarke did “accounting work” for Radiation Import and Export but it was neither steady work nor an office job. The owner gave Mr Clarke the books and he was paid per assignment. Mr Clarke had no steady income. When he earned money, he would mostly contribute to groceries, and other household expenses and buy racehorse bets.
- [16]** When the first claimant moved to the property, in the period between 2003 and 2004, she tiled the front room and made repairs to the bathroom using her funds. She did patchwork around the house including ceiling repairs and painting. She turned Ajani's room into an enclosed area using drywall. She did not save receipts for the work she did on the property during that time as it was a long time ago and she did not think that two decades later she would end up in court. She did not

have a problem using her funds as she considered herself a co-owner of the property with Mr Clarke and they were building a life together.

- [17] Whatever the property needed, she was mostly responsible for getting it done with no assistance from the defendant or any relatives. She was prepared to sacrifice knowing that she was improving the matrimonial home which was her main asset and securing a legacy for Ajani, who Mr Clarke loved as if he were his biological son as he had no children.
- [18] After fixing up the front room, the first claimant decided to start renting sections of the property and neither she nor Mr Clarke asked the defendant for her consent. Their first tenant was Mr. Andre Milford in 2006. She entered into a lease agreement with Mr. Milford as the owner of the property. She rented to several persons after that including Mr. Kendall Reid, Dianna Williams, Shanara Smith, Ms. Donna Ray Douglas, Garfield Spencer (my brother), Gary Brown, Carlton Guy, Sasha-Gaye Stoney, Ms. Tashianna Willoughby, and Yoshika aka "Bitter" (a Japanese tenant). These were just a few of the persons she rented to over the years and her name appears on all the lease agreements as landlord/owner. There were a few Japanese tenants that they got as a result of Mr Clarke's record business. He sold vintage vinyl records to Japanese collectors.
- [19] She got tenants through connections and placing advertisements in the newspaper. She was personally responsible for collecting rent, writing receipts and dealing with any repairs or complaints brought by the tenants. She made and provided their sets of keys and set the house rules. She did not ask for anyone's permission when she decided to take on a new tenant. She did not have to answer to anyone when she collected the rental payments. All the money she received was used to take care of herself, Mr Clarke, Ajani and/or maintain the property.
- [20] When the first claimant first moved to the property, it was a 3 bedroom/2-bathroom dwelling. She turned it into a 4 bedroom/4-bathroom dwelling. Ajani had his own room and she and Mr Clarke shared a room. At many points in time, one or both of the other rooms in the house were rented to tenants.

[21] After Ajani started working in 2014, he started to contribute significantly to the household which eased the claimant's financial burden especially after Mr Clarke lost his job at Radiation Import and Export in 2014. Ajani migrated to the United States of America in 2017 and is a successful contract Insurance Broker.

[22] In 2019, the claimant, Mr Clarke and Ajani decided that the house needed some major repairs and renovations. The first claimant used funds from her savings and income, as well as money given to her by Ajani, to carry out the following work on the property:

1. Replacing the entire solitex roof due to termite erosion including drywall and zinc installation
2. Tiling of living room, bathrooms, bedrooms and kitchen
3. Replacing bathroom fixtures including toilets and face basins
4. Electrical works
5. Plumbing works
6. Installation of security bars/ grills in bedrooms and veranda
7. Installation of concrete countertop and kitchen cabinets/ cupboards

[23] She obtained a valuation report in respect of the property since the filing of this claim in December 2022.² She notes that the value of the property would not be what it is today without all her hard work.

[24] Many people know how hard she worked on the property. Her cousin Garfield has transported her to collect building materials. He is a driver and has lived on the property. He transports her now because she is sick. She sourced and purchased the materials for the work, and she engaged the workmen and contractors such as Mr. Dion Reid, contractor; Mr. Archer, plumber, electrician; and "Cuz Cuz", tiler. She paid workmen and supervised the work from her income. Mr Clarke would accompany her to collect items for the property. Most of the funds came from Ajani. She would never have asked her son to invest in the property if she did not believe she had an interest, which could then be passed on to him after she died.

² Prepared by VM Property Services

- [25]** During the relevant period, the first claimant lived openly and freely without interruption as a co-owner of the property. No one ever questioned or challenged her or Mr Clarke's status as owners thereof. She conducted business as a hairdresser there, which has slowed down in the last year due to her ill health. Her clients would come to her, and she would perform services for them on her verandah. She also sold products from the property such as handbags, jewellery, makeup products and other beauty supplies.
- [26]** Based on the receipts that she has been able to find, she prepared a table of her capital expenditure on the property that shows a total of \$1,435,297.30³ which she testified represents less than one half of her capital expenditure on the property over the years including the contributions from her son.
- [27]** The defendant has never entered the property except for when the first claimant invited her to make peace with her brother on the verandah and at the surprise party in 2004. During the relevant period, the defendant has come to the outside of the property's gate some five times. She and her husband have other commercial interests in the area including a rental property in Mapleleaf Mews. Otherwise, for the past two decades, the defendant has been a stranger to the property.
- [28]** None of the tenants of the property over the years know of or have ever met the defendant. The defendant has never signed or seen any of the lease agreements with the tenants. None of the claimant's clients or customers know of or have ever heard of the defendant. None of the contractors/workmen know of or have ever met the defendant.
- [29]** The defendant has not done anything concerning the property over the relevant period to show ownership over the property. She has never asked questions about its maintenance or upkeep. She has never asked for occupation rent or demanded

³ Attachment A of Witness Statement of Georgia Campbell- Clarke filed on March 31, 2023

that the first claimant account to her for rental sums collected. She has not paid a water bill or other outgoing.

- [30] The defendant has no items belonging to her on the property. When she moved from the property in the 1990s, she took everything and made a new home on Kings House Avenue with her husband, Carlton Francis and no longer concerned herself with its upkeep or affairs. The defendant still lives at her Kings House Avenue home.
- [31] During the relevant period, the defendant also knew that the first claimant (along with Mr Clarke) was renting the property and carrying out repairs, renovations and improvements and yet did nothing to caution or deter the first claimant from that course.
- [32] The defendant did not pay taxes on the property. Mr Clarke paid sometimes but was not consistent. The first claimant has only been able to locate one payment receipt that Mr Clarke got from the tax office in 2021 in the sum of \$10,000.00. However, she notes that she knows that he made other payments. She also obtained the Payment Advice from Tax Administration Jamaica showing outstanding amounts for the several years from 2014 to 2021 in the sum of \$129,980.00.
- [33] During the relevant period, the defendant never attempted to clarify, qualify, limit or place any conditions on the claimant's occupation of the property. The defendant on more than one occasion stated that the property belongs to the first claimant and Mr Clarke. On one of these occasions in about 2017 she told Mr Clarke, over the phone, that "*Reds you know the property belongs to the both of you.*" The first claimant stated that she was able to hear this conversation.
- [34] The first claimant said that Mr Clarke told her that on another occasion in March 2021, the defendant told Mr Clarke while standing at the gate to the property that the property belonged to Mr Clarke and the claimant. In this same conversation, the defendant also said that she was going to put the first claimant's and Mr

Clarke's name on the title but that she wanted the marriage certificate. Following this conversation, Mr Clarke spoke with a lawyer, Ms. Stephanie Williams, who was a client of the first claimant at the time, to find out what would be required to do an amendment to the title including costs and legal fees. The transfer did not take place due to Mr Clarke's sudden passing.

- [35]** On October 8, 2021, at noon, the day after Mr Clarke passed. The defendant called the first claimant on Mr Clarke's phone to indicate that she would be taking steps to sell the property. The first claimant stated that this was shocking and unexpected. In addition to grieving, she had recently undergone major throat surgery. Ms Tashianna Willoughby, Ms. Angella Lee and Ms. Dalila Johnson, friends of the first claimant, were at the property with her and heard the conversation.
- [36]** The first claimant spent money on the property in the belief and with the understanding from Mr Clarke that she had an interest in the property. It was their shared asset, matrimonial home and Ajani's home. She did not think that the defendant would be so cruel and dishonest as to ask her to leave the property within 24 hours of her husband's death knowing that she had lived there for the past two decades as well as that she had agreed to help them get the property registered in their joint names.
- [37]** By letter dated December 13, 2021, the defendant through her attorneys Darby Darby & Associates wrote to the first claimant to indicate that she required possession of the property and intended to serve a Notice to Quit. The first claimant received Notices to Quit from Darby Darby & Associates in December 2021 and July 2022.
- [38]** Further, the defendant directed Constable Natalie Powell to call the first claimant to ask when she was going to leave the property. On more than one occasion, realtors showed up at the property taking pictures disturbing the claimant's privacy and peace of mind.

- [39]** The evidence of the first claimant was that she made an offer to purchase the property from the defendant, through Ajani. Ajani had obtained approval for a loan, and he made a formal 'Offer to Purchase' in the sum of \$30,000,000.00 which was accepted by the defendant in May 2022 a deal brokered by Edge Realty Jamaica Limited. Thereafter, Ajani's offer to purchase was rejected by the defendant who did not give an explanation.
- [40]** The first claimant wrote to the defendant⁴, through her attorneys to advise that by virtue of her occupation of the property and display of ownership over the relevant period, the defendant's "paper title" had been extinguished and that she cease and desist from making efforts to sell the property. The defendant's attorneys responded⁵ that their client remained the legal and rightful owner of the property and that the property was "under a sale agreement which is quite advanced".
- [41]** Just before Mr Clarke died, the first claimant's health took a turn for the worse in 2021. She has been diagnosed with multiple myeloma, has undergone radiation and is presently doing chemotherapy.
- [42]** The first claimant stated that the defendant was always aware of her failing health and tried to get her out of the property to make a profit at her expense. The first claimant has very little income or savings as a result of medical expenses. She is supported financially by her son Ajani and cannot work as a hairdresser because of her health challenges. She made the offer through Ajani in May 2022 as she cannot physically manage to relocate from her home.
- [43]** In response to paragraph 8 of the defence, the first claimant stated that Mr Clarke always knew that his mother, Ms. Moore, intended that the property be passed down to him, but he was never provided with a copy of Ms. Moore's will neither was it read to him.

⁴ by letter dated August 10, 2022

⁵ by letter dated September 2, 2022

- [44]** Mr Clarke died not knowing the contents of his mother's will. Mr Clarke and the first claimant first got a copy of the title to the Property in or around 2004/2005 and saw that it was registered to the defendant and Ms Chevannes, absolutely.
- [45]** In response to the defence⁶, the first claimant stated that while she and Mr Clarke were in a visiting relationship, she did visit the property as a guest but was not a mere licensee when she moved in with him. Mr Clarke told her that he wanted them to make a home together and they treated the property as a shared asset. They were co-owners. This is why she invested so much labour and capital in the property and why she allowed Ajani to do the same.
- [46]** She also noted that the defendant and Mr Clarke had no agreement for sections of the property to be rented. She came up with the idea on her own and told Mr Clarke what she was going to do. The defendant found out sometime later in a passing conversation with Mr Clarke and she did not have any input. Furthermore⁷, the property is not only where the first claimant lives but also where she did her business. She is therefore always on the property and on the verandah most days, especially on Saturdays from where the gate is clearly visible. The defendant did not drop off dog food every Saturday as she claims; she only came to the gate maybe five times in two decades and she has never set foot on the property. The defendant abandoned the property and did not have a good relationship with Mr Clarke. Mr Clarke never invited his sister to their home.
- [47]** The defendant says⁸ that she did not accept Ajani's offer as it was "questionable". Ajani's offer was backed by a reputable financial institution from which the sums were going to be obtained. He made the offer to save his mother from being evicted from her home. The first claimant stated that she was hurt that the defendant rejected Ajani's offer of \$30,000,000.00 and instead accepted an offer of

⁶ Paragraph 10

⁷ in response to paragraph 22 of the defence

⁸ Paragraphs 32 and 33 of the defence

\$27,000,000.00 from Teresse Ashman and Garth Ashman as per executed agreement of sale dated July 15, 2022.

[48] Attorneys for the first claimant wrote to the defendant⁹ indicating that as the first claimant and Mr Clarke had lived as man and wife and as co-owners on the property, the defendant's title was now extinguished by operation of law. In response to this, the defendant's attorneys wrote¹⁰ that the defendant had sold the property, paid the outstanding debt, allowed her brother to reside at the premises without paying rent and gave her express permission to sublet the property. In addition, she gave her brother cash from time to time via electronic bank transfer specifically to ensure that the property was satisfactorily maintained.

[49] The defendant provided sworn evidence in an Affidavit filed on October 18, 2022, in opposing the claimant's application for an injunction against her in relation to the property. In that affidavit, the defendant states at paragraphs 15 and 16:

“Over the years when I visited the Property, I became aware that there were tenants. However, my brother told me that a portion of the rent payments were used by him to maintain the subject property.

I made it clear to my brother that the subject property was owned by me and that he was given permission to stay at the subject property until it was sold. The first claimant could not have remained on the subject property if I did not permit my brother to stay there.”

[50] Prior to filing this claim in court, neither the first claimant nor Mr Clarke knew of Mrs. Moore's will and that Mr Clarke was a joint beneficial owner of the property under the will as this information was not present on the face of the copy title to the property. Ms Moore's will was disclosed and exhibited for the first time in the defendant's Supplemental Affidavit filed on October 28, 2022.

⁹ by letter dated August 10, 2022

¹⁰ by letter dated September 2, 2022

- [51]** The defendant misled the first claimant and her attorneys by statements she made in a letter dated September 2, 2022, and, in an affidavit, filed on October 18, 2022. She also misled the first claimant and Ajani when they were trying to buy the property in 2022. At no time did the defendant say to the first claimant that they would only need to pay a portion of the asking price because she/Mr Clarke was already entitled to a 50% share in the property under the will of Ms Moore. However, the first claimant makes it clear that she is not claiming a 50% interest, but a 100% interest based on adverse possession.
- [52]** If there was a balance to clear the mortgage on the property when Ms. Moore died in 1989, as the defendant claims, neither the first claimant nor Mr Clarke was aware of this. The defendant also lied to Mr Clarke when she told him that she was the owner of the property, and that Mr Clarke needed her permission to stay there. Mr Clarke always believed that he was entitled to be there no matter what his sister said. There was no agreement or understanding between Mr Clarke and the defendant about his occupation of the property. The first claimant and Mr Clarke did whatever they wanted with their matrimonial home as co-owners and to the complete exclusion of the defendant over the relevant period.
- [53]** In cross-examination the claimant agreed she extended the property in 2003 at the invitation of Mr Clarke. Cross-examination established that the claimant did not know much of what was set out in her witness statement, rather, she had been told much of it and attempted to place that hearsay information before the court as evidence. It was adduced that the claimant had no personal knowledge of the upkeep of the property when the defendant moved out or what she moved with. She had no knowledge about the will of Lucille Moore, any of matters concerning its reading or content. She had no personal knowledge of conversations said to be involving the defendant or about the character and conduct of the defendant with other family members.
- [54]** The claimant agreed in cross-examination that she had no personal knowledge as to whether there was an agreement or understanding between her husband and

the defendant regarding his occupation of the property or whether the defendant gave Mr Clarke any money but agreed that he had received \$30,000.00 from the defendant by way of a deposit to a joint bank account and she still had it up to the date of trial. She agreed that the property was insured by the defendant and did not know whether the defendant paid the property taxes. Receipts for taxes were shown to her.

- [55]** The rental agreement shown to the claimant at Exhibit 71 was dated October 26, with no year, it is in not in the claimant's name. Receipts at Exhibits 1, 5, 11 were made out to Courtney Thompson. The first claimant's explanation was that he was asked by her to buy the items thereon as he would get the worker's price. Exhibit 11¹¹ represented the first set of lumber bought by the witness after a "partner" draw.
- [56]** Kings Counsel put to the first claimant that Exhibit 11 was an invoice marked with the words "pro forma" and no evidence of payment rendering it a receipt. The claimant said she got the goods, and the invoice was paid for. The claimant had no proof of income as a hairdresser or for goods she sold as she was paid in cash.
- [57]** Exhibits 21A, B and C and 22 were in the name of China Harbour Engineering and not hers, the witness insisted that they were hers. The explanation was that she bought so much that she got a deal with those receipts.
- [58]** Exhibits 6¹² and 18 dated March 12, 2021, were suggested to be estimates, the claimant said these were receipts from Archer to "take out and put in fixtures, repair it and put in fixtures, that he did" in the front bathroom. Exhibit 16 was a receipt from Dion who repaired the roof, the drywall partition and did all other repairs.
- [59]** It was put to the claimant that there was a good relationship between the brother and sister and that the defendant came to the house every week with dog food, both suggestions were met with a negative response. The claimant was taxed that

¹¹ Dated March 7, 2019

¹² Date indecipherable

it was Mr Clarke who had done most of the repairs, she maintained that they were done and paid for by her son Ajani, they started in 2018 and continued up until the death of Mr Clarke. Ajani migrated in 2017 and spent most of the money. The defendant put her case that the claimant was not the main breadwinner between 2003 and 2021 and that there visible signs of disrepair at the property as at November 2022. The witness disagreed with both. She denied that there were no external additions to the house adding that the property has three bathrooms as shown in the valuation report at Exhibit 37.

- [60]** The claimant gave evidence of matters not in her witness statement, namely that the defendant's husband told her to keep the \$30,000.00, that she paid taxes of \$30,000.00 in 2003 at the Cross Roads branch and had discarded some of the receipts, and as her name is not on the title she got no tax receipts in her name.

Ajani Reid

- [61]** Ajani Reid filed two witness statements in this claim¹³. The witness similarly attempted to rely on much hearsay evidence. The first claimant is his mother, and Mr Clarke was his stepfather. He recalls moving to the property with his mother in 2003 when he was around 6 years old. He stated that Mr Clarke was the only father he had ever known because he met his biological father once when he was four and has never seen him again. Mr Clarke would personally go to Ajani's school to assist him with any problems that he had, Mr Clarke never introduced Ajani as his stepson but as his son.

- [62]** The witness said he lived at the property from 2003 up to 2017 when he migrated to the United States of America, where he currently lives. Since migrating, he travels to Jamaica to visit two to three times per year.

- [63]** Growing up at the property, Ajani spent a lot of time with his father and went to church at Calvary Gospel Assembly. When he and his mother moved into the property, Mr Clarke was living there alone. There was almost no furniture at the

¹³ Dated March 31, 2023 and April 18, 2023

property, there would be an echo if you spoke in there. He remembered that Mr Clarke was very eager to have them move in. During the moving process, from what the witness observed Mr Clarke was responsible for the property. Since they moved in, the first claimant was always in charge of the maintenance and upkeep of the premises. Over the years, she would carry out renovations and different types of maintenance work at the property which started during the years that they first moved in to live there. These renovations were done little by little at different periods in time. When they first moved in, there were three rooms¹⁴ on the property but only two bathrooms. His room was not ready and was not in a condition to live in. The first claimant and Mr Clarke built up a wall to complete the room using bagasse board to enclose the area and make it into a proper room.

[64] The first claimant did electrical work in the room as it did not have enough electrical outlets, and she put a bed in the room. There was no bathroom in there, she has since installed a bathroom. In the kitchen, the roof was falling, the ceiling was in a deplorable state, and it would leak constantly, whenever it rained, the entire place would flood. One of the first improvements made was raising the level of the verandah to stop it from flooding. The first claimant also built a drain to divert water from the house. It was not long after they moved in that she began work to fix up the front room and the front yard. This process took about two years. The front yard was just a heap of sand at the time and the first claimant transformed it into a beautiful garden and lawn.

[65] The first major renovation was to the front room. The point of improving the front room was to rent it to tenants. The entire room was tiled and painted. The first claimant and Mr Clarke also hired contractors to assist. They hired someone named "Cuz" to come in and do some tiling work and someone named "Jordan" to do work. The first claimant also did painting and other tasks herself. She completely redid the bathroom, added new fixtures and installed a cupboard and

¹⁴ The witness clarified same upon amplification

a cabinet. She added new doors, gave the bathroom area a more modern appearance and varnished the closet by herself.

[66] Mr Clarke helped with these improvements in terms of painting, but it was the first claimant who did most of the work, both of them interacted with contractors to do the tiling in the bathroom and had to do a lot of work manually in the early years as they did not always have the income needed to hire contractors. After the front room was improved, they began looking for tenants to rent out the two available rooms. They were solely responsible for renting the rooms to tenants. The first claimant put an advertisement in the newspaper looking for tenants. She conducted the interviews with the respondents.

[67] Good tenants always stayed at the property. They always enjoyed their time and always left on good terms. The witness recalled, Garfield Spencer, the claimant's cousin and Tashianna Willoughby staying at the property. Whenever a tenant had an issue with their accommodation it was the first claimant who would first address it. If the problem was something that she could not immediately take care of then Mr Clarke would be the one to fix it.

[68] The first claimant is a hairdresser and has been conducting her business on the property. She has been working with clients at the property for over twenty years. Since 2014, when he finished school and began working, Ajani has also been contributing money towards the maintenance and renovation work done at the property. A large portion of the improvements done at the house have been done in the years since he started working.

[69] Sometime in 2018, the witness and his parents decided that the house needed major repairs. He was an active part of renovations done between 2018-2021 as he sent most of the money and personally helped with painting the property. During this time, they replaced the entire roof of the house, extended the space in both of the rooms at the back of the house and added bathrooms to each room. The rooms were renovated, and the entire house was either tiled or re-tiled. The entire inside and outside areas of the house were painted. Grills were installed all around the

house. The witness stated that he personally painted all of the grills and gates when he was in Jamaica. Over the years, he has either sent or personally spent at least Three Million Dollars (\$3,000,000) on these renovations.

[70] Ajani stated that he knew of the defendant and that she and his father had an estranged relationship. He has never seen the defendant come onto or even outside of the property. She has never come to visit. Once or twice, she picked up Mr Clarke to get lunch. Aside from this, Mr Clarke would go to her house for Christmas dinner, but the first claimant and Ajani would not. Ajani recalled going to the defendant's house once at the 'nine-night' for Ms. Ida Chevannes who died in 2005 but was not invited into the house.

[71] The witness stated that he and the defendant attended the same church for seven years and did not sit with each other nor speak aside from exchanging greetings quickly if they passed each other. The only time that he would ever see the defendant was at church. She has never given him a present or called to wish him a happy birthday.

[72] The witness stated that he knew the defendant's husband, Mr Francis, and that he owned a townhouse located close to the property which was rented out. Sometimes Mr Francis would pass the property when he was going to the townhouse. He went straight to the townhouse and never stopped off at the property to visit or for any other reason.

[73] Ajani added that he had never seen Mr Clarke and the defendant hug or even greet each other warmly. They would occasionally communicate over the phone, but they did not do this often. Mr Clarke has never spoken of or mentioned that he had any agreement with the defendant about his occupation of the property over the years and he, Ajani, has never observed her interacting or dealing with any of the tenants at the property.

[74] The witness asked Mr Clarke what they were going to do to get the place transferred into his and the claimant's names and he indicated that he had to get

the defendant to finish some paperwork. The witness asked Mr Clarke to contact the lawyer to get the relevant documents but never received them.

[75] The day after Mr Clarke passed, the defendant called the first claimant stating that she was going to take possession of all of Mr Clarke's assets. Ajani and the first claimant went to Romans Funeral Home to arrange the funeral and burial. He financed the entire funeral and paid for everything amounting to about One Million Two Hundred Thousand Dollars (\$1,200,000.00). The defendant did not contribute anything on the day of the funeral, Mr Francis brought a wreath.

[76] Shortly after Mr Clarke's passing, the defendant sent a letter to the first claimant telling her to leave the property. Ajani was the breadwinner for the first claimant and had to pay for her medical expenses and surgeries. The first claimant could not afford to move out of the house that she had lived in for over twenty years to find a new place to live, with all of her medical issues. Also, Ajani said he could not move back to Jamaica for several months to help her through this process. He stated that they could not understand the defendant's actions, but it did not make sense to try and fight what was happening at this time.

[77] Ajani called the defendant who indicated that she was selling the property and already had a buyer. He registered his interest in purchasing it. On the same call, the defendant indicated that she was going to sell the house for Twenty-Nine Million Dollars (\$29,000,000). He told the defendant he would put forward an offer as the highest bidder and offered Thirty Million Dollars (\$30,000,000) to purchase the property. He stated that she did not take him seriously and that the call ended shortly after. He made the offer to buy the property to protect his mother.

[78] He went to Victoria Mutual Building Society and obtained approval for a loan. He submitted a formal offer to purchase the property to the defendant in the sum of Thirty Million Dollars (\$30,000,000). He made this offer because it was One Million Dollars higher than the highest bid. His offer was rejected. He tried to communicate with Mr Francis by text message to indicate that he was not getting anywhere with the negotiations with the defendant.

- [79] Ajani testified that the defendant had no reason at all to refuse this offer. There was no reason that she would reject a bid over the highest bid, and significantly higher than the market value of the property except out of malice and spite.
- [80] In cross-examination, the witness agreed the property had cracks, and damaged kitchen countertops but no exposed steel or kitchen cupboards. He provided no documentary evidence to substantiate the \$3,000,000.00 given in evidence as his expenditure on the property.
- [81] He agreed that the offer to purchase submitted by Edge Realty and the pre-qualification letter from Victoria Mutual Building Society were both signed by Maureen Ruddock. She was described as his realtor. Ajani admitted that Maureen Ruddock signed both as vendor on the offer to purchase, as well as representing the bank on the pre-qualification letter. Further, that it was established that the company stamp on the offer was that of DC Tavares-Finson Realty who did not act on his behalf. The stamp was placed on the part of the document for the purchaser's attorney and Maureen Ruddock did not work for that firm.

Tashianna Willoughby

- [82] Tashianna Willoughby gave evidence that she lived with the first claimant and Mr Clarke in or around 2009 during the school year and went home on holidays and weekends for about two years. She again lived with them in 2017 while she attended sixth form. In 2020, she needed a place to live in Kingston and she, the first claimant and Mr Clarke entered into a rental agreement.
- [83] After she moved in, she observed the tiling of one of the bedrooms and a bathroom, the changing of a door and door handle, the addition of a ceiling frame to two rooms one of which was incomplete, painting of another bedroom and the addition of inside grills at bathroom windows, to the windows in her room and the kitchen. She also saw when the new bathroom fixtures such as toilet and face basin were put in. The first claimant normally calls the persons she contracts to do the work

and even asked Ms Willoughby to oversee the installation of bathroom fixtures on occasion.

- [84]** The witness stated that she knew of the defendant and first saw her at Mr Clarke's funeral. Prior to that, they spoke on the phone the day after Mr Clarke died. Ms Willoughby stated that she heard the first claimant saying, "*which asset*" and "*I am his wife*". Ms Willoughby took the phone from the first claimant who was struggling due to her recent throat surgery. The defendant told Ms Willoughby that she will leave the first claimant and Ajani to do whatever they wanted. The defendant said that she and the first claimant are "*nothing*" and that the first claimant had not even invited her to her wedding. Over the years that she lived on the property; she had never seen the defendant.

Stephanie Williams

- [85]** Ms Williams gave evidence that over the time (2019 - early 2022) she went to the property to style her hair she observed the first claimant carrying out extensive improvements to the property including re-tiling the entire space and remodelling the bathroom. The first claimant would also tell her about her plans to replace the roof in its entirety especially the car port area to the front.
- [86]** On one occasion in or about late 2020 or early 2021 while at the property doing her hair, Mr Clarke approached Ms Williams to ask the cost for her to assist them to get the property transferred into his and the first claimant's name. She asked him whether the property was in their names already and he said no, it is in his sister's name who has indicated to him that she will transfer the property to them, but they have to pay the fees for the transfer. She told him that she would think about it and tell him how much she would charge for getting the transfer done in accordance with his instructions. The first claimant asked her whether property taxes had to be paid up before the transfer. Ms Williams told her the property taxes would have to be up to date.

- [87] On another occasion in April 2021, Mr Clarke reminded Ms Williams that she had not gotten back to him about the costs to transfer the property she reminded him to pay the property taxes. Ms Williams did not have any further conversations with the first claimant or Mr Clarke in relation to the transfer of the property. She was later made aware that he had died.
- [88] Prior to this claim, she had never heard the defendant's name mentioned by anyone. She has never seen the defendant on the property on any of her visits. Based on her own observations and up to the point that Mr Clarke spoke to her about doing the transfer, she was always under the impression that the property was owned by the claimants, she had no reason to believe otherwise.
- [89] Exhibit 74 was the witness statement of Janet Grant-Helwig, admitted in the absence of the witness on the claimant's case pursuant to the authority of **Janice Elliott v EuroStar Motors**,¹⁵ nothing turns on it.

The Defendant' Evidence

Margot Francis

- [90] Mrs Margot Francis, the defendant herein, gave evidence that she is the sole living registered owner of the property. The property was originally owned by her mother, Lucille Moore until her death in September 1989. The defendant exhibited the certificate of title registered at Volume 1260 Folio 14¹⁶ and the predecessor certificate of title now cancelled which is registered at Volume 1162 Folio 939¹⁷.
- [91] On December 8, 1989, the grant of probate of the Last Will and Testament of Lucille Moore, was issued. The defendant and her aunt, Mrs. Chevannes were the executrices of the estate of her mother. On February 9, 1991, in carrying out her duties for the administration of the estate of Lucille Moore, a transmission application was prepared, on the defendant's behalf by her former attorneys for

¹⁵ C.L. 2000/E024

¹⁶ MF-1

¹⁷ MF-2

herself and her aunt to be registered as proprietors on transmission for the property and filed at the National Land Agency.

- [92]** On the predecessor certificate of title registered at Volume 1162 Folio 939 of the Register Book of Titles, the transmission was endorsed as entered on September 29, 1991. She was informed by her attorneys and now understands that the predecessor certificate of title was surrendered under Section 79 of the Registration of Titles Act and that the transmission was not endorsed on the current certificate of title. It was the practice of the National Land Agency at the time that personal representatives of an estate be noted on replacement certificates of title as joint tenants in fee simple as in law they are viewed as owners of the property until the property is transferred to the beneficiaries.
- [93]** She testified that it was her intention to complete the transfer of the property into the names of herself and Mr Clarke with the process to be completed based on the availability of funds. At the time of Lucille Moore's death, mortgage no. 306288 from the National Housing Trust was still owed on the property. This mortgage was originally held by the Jamaica Teachers' Association Housing Co-operative Limited and was later transferred to the National Housing Trust on the 3rd day of December 1980. (The Jamaica Teachers' Association Housing Co-operative Limited was liquidated, and its accounts were turned over to the National Housing Trust.) The defendant stated that she made all the outstanding payments discharging the mortgage. The discharge of mortgage was registered on February 26, 1993, and is endorsed on the predecessor Certificate of Title.
- [94]** Over the years before and sometime after Ms Moore's death, there were several occupants at the property as Ms Moore often took persons in. However, by the end of 2001, the other occupants of the property moved out as did the defendant to live with her husband, leaving her older brother, Mr Clarke, as the only occupant. He lived alone on the property from 2001 to 2005, and no renovations were done in 2004 as the first claimant did not live on the property at that time.

- [95]** The defendant said that her mother's will was read by her and Mrs Chevannes to her brother and other family members. They were made aware that she and Mrs. Chevannes were appointed executrices. Mr Clarke was also made aware that the defendant and Mrs Chevannes were registered on the property's predecessor Certificate of Title on transmission and that the defendant held a 50% interest in the property. Mr Clarke knew that he and the defendant were the beneficial owners of the property under the will of Ms Moore.
- [96]** The defendant said that she met the first claimant in person in 2005 when she saw her at Medical Associates Hospital when Mrs Chevannes was admitted. She is aware that the first claimant and Mr Clarke were married on December 2, 2011, and that the first claimant has a son from a previous relationship. Although she does not have a close relationship with the first claimant or her son, the defendant stated that she respected her relationship with her brother.
- [97]** The defendant gave evidence that she had a close relationship with her brother and that they would talk on the telephone often. They were not estranged but had a relationship which was warm, cordial and close. Five days before his death, Mr Clarke asked her for money to help pay for the first claimant's surgery and \$30,000.00 was sent to the first claimant's account.
- [98]** The defendant was aware of and agreed with her brother renting parts of the property and that some of the rent payments went towards maintaining the property. She had an understanding with her brother that she would pay the property taxes, and he would take care of the maintenance, repairs, upkeep and renovations of the property as he was living there. She also insured the property from February 16, 2022, to the present.
- [99]** Although the defendant did not live at the property, she visited almost every Saturday and gave her brother food for the dog. She did not go into the house out of respect for their privacy.

- [100]** She did not challenge her brother's occupation of the property as he was a co-owner but never made any representation to the first claimant or her brother that the property belonged solely to him and his wife. She has never given up her interest in the property and has paid its property taxes, insurance and mortgage. She added that the first claimant was at the property by virtue of the defendant's and Mr Clarke's permission. Mr Clarke occupied the property as a beneficial co-owner and the first claimant occupied as a licensee.
- [101]** After Mr Clarke's death, the defendant decided to sell the property. She stated that based on her misunderstanding of the term "share and share alike" and the use of the term "joint tenants" on the current certificate of title, she was initially of the view that the property was owned by her and her brother as joint tenants. On the receipt of advice from her current attorneys-at-law, the probate documents and correct copies of the predecessor and current certificate of title for the property, she now understands that "share and share alike" means that the property was owned by her and her brother as tenants-in-common.
- [102]** In furtherance of the sale of the property, her former attorneys wrote to the first claimant on December 13, 2021, informing her that a valuation of the property was to be done and that a Notice to Quit would be served. Additionally, she made a report to the Police Mediation Unit to assist in mediating the issues between her and the first claimant as the first claimant and her son became upset as a result of the impending sale, were hostile and refused to leave the property.
- [103]** In May of 2022, the first claimant refused to vacate the property. An offer was made on behalf of the first claimant by her son, Ajani to DC Tavares & Finson Realty, the realtor handling the sale on behalf of the defendant. The prequalification letter provided by the claimant's son was questionable as the offer letter and the pre-qualification letter had both been signed by Maureen Ruddock who also purported to be the vendor. Ms Ruddock did not act for the defendant and was not the vendor. The defendant rejected the offer and accepted a cash offer instead.

- [104] As a result of the impending sale, a Notice to Quit dated July 2022 was served on the first claimant. Save that her brother at all material times knew of and held an equitable interest in the property as a beneficiary in possession under the will of Lucille Moore, the defendant at no time relinquished her share in the property and her paper title has not been extinguished by way of adverse possession by the claimant.
- [105] The defendant agreed in cross-examination that there had been renovations, repairs and maintenance to the property between 2001-2021 and that she collected no rent from tenants there. She testified that her brother would ask her for money to make repairs and she gave it to him; though she agreed that this was not evidence to be found in her witness statement and further that they had no such agreement. That she dropped off dog food each week was agreed not to be an act of ownership of the property, and she agreed this was not weekly as she had lived outside of the jurisdiction for a period.
- [106] When taxed about her ownership and interest in the property the witness admitted that she paid property taxes once between 2003 and 2021, that was only in 2012. Further she paid the mortgage but had never asked Mr Clarke to contribute. The witness gave evidence that her brother was a beneficial co-owner as well as a licensee, she changed her evidence after it was put to her that he did not need her permission to occupy the property. Exhibit 41¹⁸ was shown to the witness who confirmed that at paragraph 16, she told her brother that she owned the property and that he was given permission to stay until it was sold. She confirmed that she did not know when the property was rented out and accepted that she met a Japanese tenant.
- [107] The defendant was not able to dispute whether the first claimant had done any of the renovations or made payments to that end. She denied knowing the first claimant face to face before 2005, when confronted with a handwritten note to the first claimant and her brother: "*To Junior and Georgia*" dated 2004, the witness

¹⁸ Affidavit of the defendant filed October 18, 2022

disagreed that it was written in a book she had personally delivered to the first claimant.

[108] The witness agreed when taxed that there was a conflict concerning the instructions she had given to Darby Darby & Associates which said that she was a purchaser of the property which conflicted with statements in her amended defence and witness statement that Mr Clarke occupied the property as a beneficial co-owner. The defendant qualified her answer by testifying that there were misrepresentations contained in the letter from the law firm of Darby Darby & Associates. She agreed that she paid no property taxes between 2003 – 2011.

[109] The witness admitted in cross-examination that she told her brother she would put his name on the title as it should have been, and she would take steps to have this done. She denied that the first claimant's name should be added. She admitted to not knowing what "share and share alike" in the will meant. At the time of the sale of the property the new title registered at Volume 1260 Folio 14 was used by her lawyer. It was admitted that there was no accounting to the estate of Lancelot Clarke for the proceeds of sale of the property in the sum of \$27,000,000.00.

Submissions

The Assessment of Witnesses

[110] Mr Cowan, for the claimants, submitted that the first claimant proved to be a credible witness who gave honest and consistent testimony at trial. The majority of her cross-examination by King's Counsel was aimed at identifying hearsay statements made in her witness statement. When suggestions were put to her about her evidence being untruthful, she maintained her assertions and answered consistently with her previous testimony.

[111] The three witnesses who supported the first claimant's evidence also appeared honest and credible. Their evidence was consistent with and corroborated the evidence given by the first claimant.

- [112] The defendant has proved to be a dishonest witness whose evidence is not credible. She has shown this by her complete change of position regarding Mr Clarke's ownership of the land before and after his death and has demonstrated irrational and blind hatred towards the first claimant in seeking to force her out of the subject property immediately after Mr Clarke's passing.
- [113] King's Counsel for the defendant submitted that Mrs Francis' credibility throughout the course of the trial, was unshaken. Mrs Francis' calm and composed manner during cross-examination demonstrated that she was genuinely committed to telling the truth. She was generally consistent in her evidence and did not shy away from answering the questions put to her. During the proceedings, her evidence was notably candid, with an impressive ability to recall all the material facts related to the property. Furthermore, her evidence was corroborated by documentary evidence which solidified her standing as a trustworthy and credible witness.
- [114] Mrs. Georgia Campbell-Clarke, who was the key witness for the claimants, presented evidence consisting mainly of hearsay. Throughout her evidence, she provided answers in relation to matters of which she had no personal knowledge put to her by her attorney. Her demeanour was marked by displeasure and a noticeable shift in her tone. In fact, she had to be told repeatedly by the court to answer the suggestions of King's Counsel. This has cast serious doubt on the reliability and credibility of her evidence. Accordingly, where there is a conflict in the respective evidence of Mrs. Margot Francis and Mrs. Georgia Campbell-Clarke, Mrs. Francis' evidence ought to be accepted over that of Mrs. Georgia Campbell-Clarke.
- [115] Ajani gave evidence which consisted of conclusions he drew from what was said to him by others. His evidence also supported some of the contentions of the defendant as it related to her relationship with her brother. The defendant had a good relationship with her brother and that was supported by Ajani's evidence of Mr Clarke being taken to Christmas dinners, lunches and having regular visits from the defendant.

[116] Ms. Willoughby presented evidence which consisted mainly of hearsay, and conclusions she drew from what was said to her by others. In cross-examination, it was evident that there were glaring errors in her witness statement. This has cast serious doubt on the reliability and credibility of her evidence.

[117] The evidence given by Ms. Williams was mainly based on hearsay, i.e., alleged statements made to her by Mr Clarke and Georgia Campbell-Clarke. Neither she nor her firm was ever retained as an attorney herein. She made no effort to independently verify what they allegedly told her regarding the ownership of the property. Interestingly enough, even though her evidence was primarily based on hearsay, she said nothing about being asked how to claim ownership of the property by way of adverse possession.

[118] In response to the claimants' skeleton submissions, counsel for the defendant submitted that it contained inaccuracies. For example, (i) No Notice to Quit dated December 13, 2021, was served on the first claimant. A letter was written by the defendant's former Attorneys-at-Law stating the defendant's intention to sell 22 Mapleleaf Avenue, Kingston 10 and give notice to quit at a later date. A Notice to Quit was served on the first claimant on July 13, 2022¹⁹; and (ii) the defendant did not make any express representations to Mr Clarke that 22 Mapleleaf Avenue was owned by himself and the first claimant. The defendant also did not make any express representations that she would transfer the property into their names.²⁰

The Limitation of Actions Act and Adverse Possession

[119] The law relating to adverse possession in Jamaica is outlined in both statute and the common law. The Limitation of Actions Act ("the statute of limitations") outlines the operation of the law relating to the extinction of the title of a registered proprietor to land. Section 3 operates to stop a registered proprietor, who has not

¹⁹ see B. 6 pg. 3, B. 4 pg. 34 -35

²⁰ see B. 6 pg. 13, B. 1 pg. 34

been in possession of land for the limitation period, from entering onto the land or bringing an action for recovery of possession of same.

[120] Section 14 provides that any one of several persons entitled to possession of land who is in physical possession of the land and exclusive possession of that land, is deemed to be in possession of said land for their own benefit. Essentially, one person entitled to possession of land may extinguish the title of another person who is similarly entitled to possession, by virtue of the latter's own physical possession. Section 30 of the Act operates to extinguish the title and accompanying rights of a person to whom Section 3 applies. The combined effect of the Sections 3, 14 and 30 is that a registered proprietor of land may be dispossessed and lose their title and accompanying right to recover possession of same, by virtue of the operation of the statute of limitations acting against them.

[121] The aforementioned sections of the Limitation of Actions Act provide:

“3. 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.”

...

14. When any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons or any of them.”

...

30. At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit

respectively might have been made or brought within such period, shall be extinguished.”

Issue 1: Whether the second claimant is entitled to a fifty-percent interest in the property

[122] Lancelot Clarke died on October 7, 2021, leaving Georgia Campell-Clarke his widow. That they were married is not in dispute. It is also not in dispute that Mr Clarke died intestate. The Intestates Estates and Property Charges Act, section 4(1)(d) provides that:

“The surviving spouse shall take:

(d)the whole or a proportion of the residue of the residuary estate after making provisions pursuant to paragraphs (a), (b) and (c) apportioned on the following principles –

(i) If there is no child or other issue and no parent surviving the intestate, the whole of the residue aforesaid, absolutely.”

[123] There is no dispute that the first claimant as the spouse would be entitled to a grant of letters of administration in the estate of Lancelot Clarke and she has been appointed in this claim as administrator ad litem. It is conceded that the second claimant is entitled to a fifty percent share of the property.

Whether Mr Clarke had dispossessed the defendant

[124] If it is established that Mr Clarke has dispossessed the defendant then there would be no need for this court to assess whether the first claimant has separately and distinctly dispossessed the defendant. The issue of dispossession by Mr Clarke is central to determining the issues set out in the claim as well as the counterclaim.

[125] The key to assessing the claim to a possessory title is to be found in asking the correct questions against the entirety of the factual matrix and then answering them against the background of the registration of the property, the object, scheme and language of the statute of limitations and the overall justice of this case.

- [126] The question is simply whether Mr Clarke has dispossessed the paper owner by being in possession of the land for the requisite period without the defendant's consent. In order to determine if he had, the court has to look at the evidence to see whether there are acts sufficient to dispossess the paper owner. The circumstances and purposes for which the property was being used or might have been used are all relevant to this issue.
- [127] It is accepted by both parties that Mr Clarke participated in the renovation works done to the subject property over the years and that he was in occupation of the property. The Clarkes occupied and treated the property as if they were co-owners as did so as man and wife. It is open on the evidence to find as a fact that Mr Clarke treated his wife as a co-owner without reference to the defendant.
- [128] Regarding physical possession, the essential test is whether the 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 had done so."*²¹ The intention is merely an intention to possess the land not an intention to own or even acquire the land. It is *"not necessary to show that there was deliberate intention to exclude the paper owner or the registered proprietor,"*²² all that has to be shown is the intention to occupy and use the land as one's own.

The concept of possession, in its fullest and legal sense, consists of two constituent elements: (1) factual possession, which is a sufficient degree of physical custody and control over the property in question, and (2) the intention to exercise such custody and control over the property on one's own behalf and for one's own benefit ('the animus possidendi'). So, if the law is to attribute possession of land to a person who can establish no paper title to possession, he must be shown to have both factual possession and the requisite intention to possess. The requisite intention is an intention to possess and not necessarily the intention to own. See, for instance, JA Pye

²¹ [2003] 1 AC 419 para 41

²² Supra Para 71

*(Oxford) Ltd and Others v Graham and Another [2002] UKHL 30; [2002] 3 All ER 865 and Wills v Wills.*²³

- [129]** The evidence is undisputed that the defendant moved out of the property to live with her husband in 2001, leaving Mr Clarke living at the property by himself.²⁴ The first claimant and her son moved in to live with Mr Clarke in March 2003 and continued living with him as his family since that time. I accept that the first claimant moved into the property in 2003 as the defendant may have claimed to have met her in 2005, but this was shown to be a false statement based on the evidence in her handwritten note from 2004 referred to earlier. In addition, the defendant has no way of disputing the date the first claimant entered into possession of the property for she could give no evidence of this.
- [130]** Mr Clarke did not seek or require the permission of the defendant to reside at the property or to move in the first claimant and her son. The undisputed evidence was that Mr Clarke rented parts of the property and paid the property taxes for 2021 in part.
- [131]** Mr Clarke was always in occupation of the property for his own use and benefit, he never left. He invited the first claimant to live there with him, openly, without interference from the defendant or anyone else. On the defendant's own evidence, she did not disturb the couple. This means Mr Clarke was in continuous, possession, undisturbed by the paper owner.
- [132]** He did not tell the defendant when he began to rent out parts of the property and he shared no income from it with her. Renovations were done by Mr Clarke and this is agreed, the income he earned from his bookkeeping efforts was not challenged. This means he spent his earnings on what was his home, for his own use and benefit and that of his wife. Tenants were selected and interviewed, rent was collected, and none of it was discussed with the defendant, none of the rental was shared with her and no one accounted to her for any of these arrangements.

²³ Para 51 of Fullwood v Curchar

²⁴ Witness Statement of Margot Francis filed September 27, 2023, para 19

Her knowledge, consent, input or objections were neither requested nor considered. Mr Clarke was in control of the entire property after the defendant left it. The defendant left no one whether on the property or acting as her agent to look after her interest regarding the land, as there is no evidence that Mr Clarke was acting on her behalf.

[133] The defendant was not in receipt of any profit or income from the property whether directly or indirectly or from anyone claiming through her from the date she vacated the property. She took no steps to claim she was owed or to bring an action in court for any income or rent she was entitled to from the property as a registered owner.

[134] Having looked at the evidence, it is the intention of the person in possession, rather than the intention of the dispossessed person, that is relevant for the purposes of determining the sufficiency of possession for the extinguishing of the title of a holder of the paper title. (See **JA Pye (Oxford) Ltd v Graham**)²⁵

[135] On the mental element required, the defendant admitted in cross-examination that she told her brother “she would put his name on the title as it should have been”, and that she would take steps to have this done. This evidence was supported by that of Stephanie Williams who testified that she was approached by Mr Clarke in that regard in early 2020/2021. The evidence of a conversation between Ms Williams and Mr Clarke was admitted as going to the state of mind and conduct of Mr Clarke.

[136] These conversations Mr Clarke held with his sister and Ms Williams are accepted as evidence which demonstrates that Mr Clarke had formed the intention to own the property as certain inferences can be drawn from those conversations:

²⁵ [2003] 1 AC 419

- (i) He knew his sister's name was on the title.
- (ii) He knew she had the power to "put his name on the title."
- (iii) The defendant's power to add her brother to the title had to have been derived from someplace. Based on the evidence, the inference can be drawn that Mr Clarke knew this power was derived from their mother's will.
- (iv) He knew his name should have been on the title and it was not there.
- (v) He was desirous of changing that situation in his favour as his sister had failed to do so as the registered owner.

[137] This evidence demonstrates that Mr Clarke intended to claim his fifty-percent share and to remain in occupation. The estate having not yet been fully administered. It was established in cross-examination that the defendant told her brother, that "*she was the owner of the property and made it clear to him that he lived there with her permission.*"²⁶ I accept that the defendant said this to Mr Clarke and so he knew that the defendant had the right to administer the estate of his mother and had the capacity to do what she wanted with the property. In that regard, Mr Clarke knew that he was subject to the whims and fancies of the defendant as regards the property. He knew she had the power over the property and what was done with it. However, Mr Clarke knew he had a better claim and a right to remain by virtue of his continuous, exclusive, undisturbed occupation of the property and this is why he sought the advice of Ms Williams despite his sister's name being registered on the title.

[138] However, the intention of Mr Clarke to be ascertained is not to own the property but to possess it. From the above evidence of an expectation of ownership, the state of mind of Mr Clarke was demonstrably that he should continue living on the property as he had always done.

²⁶ Affidavit of Margot Francis filed on October 18, 2022, at para 16

- [139] A possessor's claim for adverse possession is not defeated by a lawful title or interest. (see **Rhondda Cynon Taff County Borough Council v Watkins**.²⁷) Mr Clarke had possession and he had a lawful interest in the land.
- [140] The defendant in her witness statement said that she was aware and agreed with her brother renting parts of the property and that some of the rental payments went towards maintaining the property.
- [141] In Exhibit 41,²⁸ the defendant deposed that over the years when she visited the property, **she became aware** that there were tenants, and her brother told her that a portion of the rental was being used by him to maintain the property.
- [142] The defendant agreed that in paragraph 27 of her witness statement said she had an understanding with her brother that she would pay the property taxes, and he would take care of the maintenance, repairs, upkeep and renovations.
- [143] It was put to the first claimant in cross examination that she had no personal knowledge as to whether there was an **agreement or understanding** between her husband and the defendant regarding his occupation of the property or whether the defendant gave Mr Clarke any money.
- [144] The sworn evidence in the affidavit has nothing to do with an agreement and can be interpreted to mean the defendant had no knowledge of how the property was being used by her brother. This goes to her credibility as they are all her evidence in this court in separate proceedings concerning the same property.
- [145] Further, she agreed that paragraph 27 was also in conflict with the letter from her former attorneys which states that she gave her brother cash to ensure the maintenance on the property was being done satisfactorily, (without stating to whose satisfaction.) It was put to her that no part of the alleged understanding involved providing her brother with money for maintenance, repair, upkeep and

²⁷ [2003] 1 WLR 1864 at para 25.

²⁸ Affidavit of Margot Francis filed October 18, 2022

renovations. The witness agreed. There was also no documentary evidence to support the assertion that she gave cash to her brother for this purpose.

[146] In cross examination, the defendant admitted that the understanding she had with Mr Clarke, in the evidence as set out in her witness statement and amended defence was that her brother occupied the property as a beneficial co-owner, and that this was inconsistent with her instructions to her former attorneys in their letter of September 2, 2022 that her brother was a licensee and she was a purchaser of the property.

[147] These witness statement, the affidavits, and the evidence agreed in cross examination that the defendant was the owner of the property and had made it clear to her brother that **he lived there with her permission** coupled with the suggestion put to the witness reveal the inconsistent positions taken by the defendant in her evidence.

[148] The defendant had no way of knowing whether maintenance was in fact done. It was her evidence that she did not enter the house. She therefore cannot say whether it was her brother or the first claimant who did any maintenance, repairs, upkeep or renovations jointly or severally. She gave no evidence as to what part of the property was to be maintained, how much money she sent, for what purpose or how this was carried on during the period she admitted she had lived outside of Jamaica. There is no documentary evidence of any cash payments to Mr Clarke for maintenance. This means that the statement made to her former attorneys is false. This goes to her credibility.

[149] It was the defendant's evidence that she did not go inside but remained at the gate to give the couple privacy when she visited each week. Should this evidence be accepted it means that the defendant elected not to re-enter the property as the paper owner. She sat on her rights and thereby validated the occupation and possession of the property by the Clarkes as she did nothing about their presence on the land though she was the paper owner. Further, it means the defendant exercised no control over the property she chose not to enter. This is evidence

from which it can be inferred that the defendant did not object to any of the acts taking place on the property or the user of the land.

[150] In her pleadings and witness statement, the defendant relied on making mortgage payments, insurance payments and property taxes as evidence of acts of ownership over the subject property. In cross-examination she admitted that the mortgage payments were not made during the period in which Mr Clarke was solely in possession of the property, after 2001. None of the payments were made between 2003 – 2021, the dates of the entry of the first claimant and the death of Mr Clarke.

[151] The evidence was that she began making mortgage payments on the passing of her mother in 1989 and that the last payment was made in 1993, eight years before she moved out of the property. The registration on the certificate of title in 1991 was on transmission following her mother's death and was not related to the payment of the mortgage. The payments began before she was registered on the title and was not yet the paper owner.

[152] Further, based on the defendant's undisputed evidence that she paid off the balance of the mortgage to the property it was her duty as an executrix, to pay the just debts of the estate, the main asset of which was the property held subject to a mortgage by the Jamaica Teachers Association. The transmission application was registered subject to the incumbrances, and mortgages noted on the certificate of title to the property. In the present case, both Lancelot Clarke and Margot Francis took the property subject to mortgage. The defendant testified that when she paid the mortgage, she never asked Mr Clarke to contribute. Paying off mortgage number 306288 in my view, could not be viewed as an act of possession by the defendant as registered proprietor.

[153] The payment of insurance for the property was relied on by the defendant as an act of ownership over the subject property. None of the payments were made between 2003-2021, the dates of entry of the first claimant and the death of Mr. Clarke. The defendant admitted that she began making insurance payments in

respect of the property in 2022, after her brother passed. Again, this evidence supports the view that the acts of ownership relied on by the defendant did not take place during the occupation of the first claimant and cannot be considered an act of ownership in the context of a claim for adverse possession.

[154] The defendant also relied on the payment of property taxes. Exhibit 52 is receipt numbered 536786 from Tax Administration Jamaica. It discloses a lump sum payment of \$33,530.00 paid in the names of both executrices on November 22, 2012 for tax years 2006-2007; 2007-2008; 2008-2009; 2010-2011; 2011-2012; 2012-2013. There was no payment for tax year 2009-2010. The tax receipt does not state who paid these taxes, however they qualify as just debts of the estate which the defendant had a duty to pay as one of the trustees. She had not yet completely administered the estate, as up to the time of the payment of these taxes the transfer to her brother had not yet been effected. The estate had not been wound up. The payment of taxes in this context does not qualify as an act of possession on the part of the paper owner but is viewed by this court as an act of the defendant as a trustee paying the just debts of the trust property.

[155] To the extent that the defendant seeks to rely on a single lump sum payment of outstanding property taxes as an act of ownership of the land, the law is set out in the cases of **Manfas Hay v Maisene Myrie-Hay And Clover Thompson And Jonathan Prendergast**²⁹ and **JISCO Alpart Jamaica V Monica White (By Executor And Representative Horace Gayle)**³⁰, in which it was established that the payment of property taxes is not necessarily evidence of the ownership of land as anyone who desires to pay the taxes on the land may do so. The Courts noted that while the payment of taxes may be important it is not decisive of title and must be viewed in conjunction with some other evidence of possession.³¹

[156] Further, on the point of the payment of taxes, the entire sum paid in 2012 was not demonstrative of an agreement with Mr Clarke as was said in the witness

²⁹ [2022] JMSC CIV 159

³⁰ [2022] JMSC CIV. 118

³¹ Para 84; para 89

statement, rather, it has to do with the defendant being required by law to administer the estate of Lucille Moore, as its executrix since 1989 and failing to pay the debts of the estate in this regard, until 2012.

[157] The defendant removed all of her belongings in 2001 when she moved out and did not return nor re-enter the property once the first claimant moved in.

[158] The defendant said she visited the property once a week with dog food, this would mean if this evidence was accepted, that she spoke with her brother each week, it can be inferred that she ought to have been able to give evidence of all that concerned the property and her brother's use of it however she could not. As the defendant did not have a good relationship with the other family members living at the property who was the dog food given to or left with?

[159] This visit to the property was not said to be to check up on things, its purpose was to feed the dog, this does not qualify as an act of possession. The defendant also agreed in cross-examination that her act of taking dog food could not have been an act of ownership of the property, and further that her evidence that she did so weekly could not have been so, as she had lived outside of Jamaica for a period. This evidence from the defendant of weekly visits with dog food does not qualify as an act of ownership and is untruthful.

[160] The defendant was not able to dispute whether or not the first claimant had done any of the renovations on the property or made any payments to that end. The defendant in her witness statement said she met the first claimant in 2005 and denied knowing the first claimant face to face before 2005. She was confronted with her handwritten note to the first claimant and her brother: "To Junior and Georgia" signed with her name and the year 2004.³² This is yet another bit of unmistakable evidence of falsehood on the part of the defendant.

³² Exhibit 35

- [161] I accept the evidence of the witnesses for the first claimant that none of them had ever seen the defendant come to the property. The evidence discloses that the defendant had abandoned or discontinued possession of the property and I so find.
- [162] The state of mind and conduct of Mr Clarke towards the property is evidence of his being in factual possession, in the sense of physical custody and control for his own benefit. He also had the intention to possess it for his own use and benefit and to share his possession with the first claimant who was his wife. That is all that is required for dispossession once the requisite limitation period is satisfied. Based on the foregoing, the court finds that Mr Clarke was in factual possession of the property, and he had the requisite intention to possess the property.
- [163] From 2003, the date of entry into possession of the first claimant up to the date of the death of Mr Clarke in 2021 this court finds that the defendant failed to exercise any acts of ownership over the property. This court finds that Mr Clarke had dispossessed the defendant as the title holder and her paper title to the property has been extinguished by operation of law. I find that Mr Clarke was entitled to the entire legal and equitable interest in the subject property by virtue of adverse possession.

The entitlement of the first claimant to possession

- [164] Whatever the Clarkes did on the property they did as man and wife, whether it was renovations or rentals, it was based on their joint, exclusive possession without reference to the defendant. The first claimant was in possession by virtue of Mr Clarke's possession not because she was not a paper owner, rather, she was a person who had derived the right to occupy the property from her husband. The Clarkes were joint occupiers. The first claimant based her right to possess the property through her husband.
- [165] The defendant did not put the first claimant into possession, so the first claimant could not be a licensee of the defendant's, she would have to have been a licensee of Mr Clarke's. The defendant could not have revoked a license she did not grant.

Moreover, while the Clarkes lived together as they have done since 2003, the defendant would have had no standing to do so.

[166] In relation to the intention to possess the property on the part of the first claimant, this intention may be inferred from her conduct and physical possession.³³ The first claimant has given unchallenged evidence which I accept that she moved into the subject property with Mr Clarke as his partner on the understanding that they would both occupy the property as co-owners.³⁴ The defendant having been unable to state when the date the first claimant moved into the property could not seriously suggest that the first claimant was her licensee. Further, since 2003, the defendant had no knowledge as to what the claimant did by way of any repairs, improvements or renovations to the property and admitted that she could not dispute this evidence.

[167] It was on the heels of the death of Mr Clarke that the defendant began to stridently assert ownership of the property and retained attorneys to indicate this position to the first claimant. That which she could not assert while her brother was alive cannot now be asserted successfully after the limitation period with respect to possession of the property.

[168] The first claimant has established that she was entitled to possession of the property having derived her occupation as a joint occupier with Mr Clarke from 2003.

Whether the defendant has the locus standi to file a claim for recovery of possession against the first claimant

[169] Mr Clarke was entitled to be registered as a proprietor of the property. He was in possession and therefore has a defence to an action for recovery of possession, which is now defended by his estate. His interest was that of a residuary

³³ *Wills v Wills* (2003) 64 WIR 176

³⁴ Witness Statement of Georgia Campbell Clarke filed March 31, 2023, para 11

beneficiary under a will, it is not an equitable interest, but he has a right to have the estate of the deceased duly administered.

- [170] It is clear that the defendant held the property on trust for her brother as executrix of their mother's estate. There is no evidence that Mr Clarke ever left the property to live elsewhere, his occupation was continuous. His interest awaited registration on transmission which was the responsibility of the defendant as an executrix. When this registration on transmission was effected, the executrices were registered as the proprietors of an estate in fee simple on the predecessor certificate of title registered at Volume 1162 Folio 939 of the Register Book of Titles. The transmission has been endorsed as entered on September 29, 1991.
- [171] Section 14 of the Limitation of Actions Act and the authorities of **Tanya Ewers v Melrose Barton-Thelwell**³⁵ and **Wills v Wills**, support the position that Mr Clarke's position who was in possession of the entire property did so for his own use and benefit and for his wife's use and benefit to the prejudice of the defendant.
- [172] Mr Clarke was the one in possession. He would not have been in the position of a squatter. He had to establish as beneficial co-owner that he had been in possession of the entirety of the property for his own use and benefit and on his own behalf as pursuant to section 14, a co-owner is allowed to acquire a possessory title against other co-owners. The section supersedes the common law principle that the possession of one joint tenant is the possession of all. the possession of one joint tenant is not the possession of the other.³⁶
- [173] Mr Clarke did not account to the defendant for his use and occupation of the property as indicated earlier; there was no accounting to the defendant for rent collected; no evidence of any accounting to the defendant for renovation or improvement works done to the subject property; no evidence of an accounting for

³⁵ [2017] JMCA Civ 26

³⁶ Para 38 Tanya Ewers

payment of property taxes; nor any credible evidence to suggest a common understanding between the siblings as to his occupation of the property.

[174] This evidence reduces the presumption of joint possession of the property. The defendant's evidence that she initially thought she and her brother were joint tenants is to be viewed in light of section 14 of the statute as that assertion assisted in further weakening her case.

[175] In **Tanya Ewers (Executrix of the estate of Mavis Williams) v Melrose Barton-Thelwell**, Brooks JA (as he then was) stated the general principles thus:

“[35] In Wills v Wills, their Lordships held that a woman, who was a joint tenant of property with her former husband, lost her title to that property when she failed, for a period in excess of 12 years, to exercise any proprietary interest in it. Her former husband, by virtue of his exercise of sole dominion over the property for that period, acquired the entire interest in the property. The displaced woman was therefore, prohibited by virtue of the Limitation of Actions Act, from recovering the property from the husband's widow. Section 3 of the Limitation of Actions Act provides: “3. 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.”

[36] Their Lordships, in Wills v Wills, made an important statement at paragraph 29 of their judgment, which is relevant to the present case. They said: “[The first wife] no doubt wished to maintain her claim to coownership, not least because she expected to outlive [the husband] and hoped to take by survivorship. But such an intention, however amply documented, cannot prevail over the plain fact of her total exclusion from the properties. After

1976 at the latest [the husband] occupied and used the former matrimonial home and enjoyed the rents from the rented properties as if he were the sole owner, except so far as he chose to share his occupation and enjoyment with [the second wife]."

[37] Although their Lordships sought to say that that case turned on its own facts, the principle concerning the physical possession by one joint tenant being able to extinguish the title of another joint tenant, who is dispossessed, or has given up possession, is of general application. Section 14 of the Limitation of Actions Act was relied upon by their Lordships on the point."

[176] There being no challenge to the occupation of Lancelot Clarke by the defendant and his clear entitlement to his share of his mother's estate, the defendant also argues that it would be unreasonable for the court to award more than a fifty-percent share to the second claimant as it was the defendant who paid the mortgage, insured the property and paid the property taxes. This is a difficult submission to understand for the following reasons.

[177] The defendant never did her duty as executrix to transfer the legal estate in the property to her brother relative to his share in it. The current certificate of title registered at Volume 1260 Folio 14 issued on or about May 3, 1993 states that both the defendant and Ms Chevannes are proprietors of an estate as joint tenants in fee simple. This position was never changed by way of transfer to Mr Clarke who died without the legal title to the property ever being registered in his name as the defendant admitted it should have been. This is a deprivation to his estate for which the defendant gave no account.

[178] The defendant's witness statement said her brother occupied the property as a beneficial co-owner at paragraph 25 and, notably at paragraph 30 of her witness statement she said: "*I did not challenge the occupation of the Property as my brother was a co-owner of the Property. However, I never made any representation to the 1st Claimant or my brother that the Property belonged solely*

to him and his wife." In cross-examination she conceded that she told Mr Clarke his name should have been on the title and that she would take steps to do so which she never did.

[179] At paragraph 32 of her witness statement, the defendant said she was initially of the view that the property was owned by her and her brother as joint tenants. On the receipt of advice from her current attorneys-at-law and on the probate documents and correct copies of the predecessor and current Certificate of Title for the property, she now understands that "share and share alike" means that the property was owned by her and her brother as tenants-in-common. The evidence that she was of the view that she and her brother were joint tenants ought to have caused the defendant to register his interest as that was their mother's wish as set out in her will. This goes back to the defendant's failure to deal with the trust property as she was required by law to do.

[180] I understand paragraphs 25, 30 and 32 of the defendant's witness statement to mean that she accepted that she had no greater right than did her brother to the property and that they were equal in terms of ownership. They had an equal entitlement. The words share and share alike used in the will of Lucille Moore also give rise to this conclusion.

[181] The words share and share alike mean:

'Though the words, "equally to be divided", and, "share and share alike", are, in general, construed, in a will, to create a tenancy in common; yet, where the context shews a joint-tenancy to be intended, the words should be construed accordingly.' *Armstrong v Eldridge (1791) 3 Bro CC 215 at 215, per Lord Thurlow LC.*³⁷

[182] This evidence when compared to her affidavit evidence referring to her brother as a licensee as well as paragraph 15 of her witness statement which said that it was her intention to complete the transfer of the property into the names of herself and

³⁷ Words and Phrases Legally Defined, (2024), 5th ed.

Mr Clarke with the process to be completed based on the availability of funds. This transfer never took place and is suggestive of a shift in position and an intention to deprive Mr Clarke of his interest in the land.

[183] The letter from Darby Darby & Associates dated September 2, 2022³⁸ reads:

*“...We are instructed that **the property was purchased** by our client Mrs Margot Francis as she paid the outstanding debt and in May 1993 the property was turned over her and she added her aunt, Mrs Ida Chevannes thereto as joint tenant, which was duly noted on the Certificate of Title.”*

[184] There is not one scintilla of evidence that the property was ever the subject of purchase by the defendant. Further the letter reads at paragraph 4 that:

“In light of her brother’s financial constraints, our client advised that she allowed her brother to reside at the premises without paying rent and gave her expressed[sic] permission to sublet the property, the funds from which would take care of any repairs necessary for the upkeep of the property.”

[185] There was no other source from which the law firm would have obtained these instructions as it was acting on behalf of the defendant in response to a letter sent by Nunes, Scholefield, DeLeon & Co., dated August 9, 2022. The letter has not been disproved by any evidence to the contrary. The defendant said it contained misrepresentations; however, this was a matter easily cured by waiving privilege so that the defendant’s instructions could have been placed before this court, this was not the case.

[186] Nowhere in that letter from her former attorneys was there any indication that Mr Clarke is entitled to an interest in the property, on the contrary he is referred to as a licensee.

[187] Exhibit 41 is an affidavit sworn to by the defendant made in support of a Notice of Application for Court Orders for Injunctive and other relief filed on October 5, 2022. This affidavit was shown to the witness and paragraph 16 specifically. This was

³⁸ Exhibit 64

sworn evidence in proceedings before another court in which full and frank disclosure is a matter of law. It reads:

“I made it clear to my brother that the subject property was owned by me and that he was given permission to stay at the subject property until it was sold. The claimant could not have remained on the subject property if I did not permit my brother to stay there.”

- [188]** It would seem to me that all this evidence points to the defendant unsuccessfully attempting to assert several positions, the first categorised her brother as a licensee in that it was she who permitted him to reside at the property. This could not be true as her instructions to Darby Darby & Associates state that she was a purchaser of the property which is inconsistent with her witness statement and amended defence which state that her brother occupied as a beneficial co-owner.
- [189]** The defendant did not permit her brother to occupy the property, he was not a licensee, and he had always occupied the property as an undisputed fact. She could not have revoked a license she did not grant, nor could she have served him with a notice to quit nor recover possession from him as her tenant.
- [190]** The evidence presents a picture of the defendant's dealings with her brother despite his fifty-percent entitlement to the property for the truth was withheld from Darby Darby & Associates at the point at which she sought to re-enter the property. This is an inference open on the facts as had the defendant been in possession of the property there would have been no need to serve a notice to quit on the first claimant who was not a tenant. The notice to quit accords with the view held by the defendant that she permitted her brother to live on the land and the first claimant was her licensee as well. The reason for the defendant's falsehood becomes clear when viewed in this context. The conclusion to be drawn from all this evidence of false statements and inconsistent positions on the part of the defendant is that she had moved from wanting an equal entitlement to representing falsely that she was solely entitled to the property and her actions are

demonstrative of this. However, she has been found to have been dispossessed by Mr Clarke and Mrs Clarke.

[191] Once the paper owner is dispossessed, under section 14 of the Limitation of Actions Act the right to recover possession arises. This right has a lifespan of twelve years before it expires. Section 68 of the Registration of Titles Act is subject to the statute of limitations as well.

[192] What is the date on which time began to run? In my view, 2003, the date of entry into possession of the first claimant is the date the clock started. Up to the date of the death of Mr Clarke in 2021, much more than twelve years has elapsed.

[193] September 29, 1991, was the date of registration by transmission. There would have had to have been one of the following three acts by the paper owner to stop time:

- (i) An action for recovery of possession.
- (ii) Physical re-entry onto the property.
- (iii) Any acknowledgement of the title of the paper owner.³⁹

[194] The status of Mr Clarke as it related to the property was not conferred upon him by the defendant rather, it was bequeathed to him by his mother Lucille Moore. The defendant failed to transfer his share to her brother while he was alive engaging in unexplained delay in administering the estate since the date of the grant of probate on December 8, 1989.

[195] In this action for recovery of possession, the pleadings were filed in 2022. It is difficult to see how the defendant could have recovered possession from Mr Clarke and this explains why there was no attempt at re-entry. There is some evidence on the third aspect, and it is to this that I now turn.

[196] The evidence of a conversation relating to the transfer of the property arguably is an acknowledgement by Mr Clarke that the paper owner was his sister, and he

³⁹ Arthur McCoy v Marcia McCoy, Fitzroy Glispie [2012] JMSC Civ 60 at para 67

was subject to her title. There is no evidence as to the date of this conversation between the siblings, however, the date given by Ms Williams is 2021 at the earliest. There was no memorandum in writing in this regard and the conversation took place many years after the limitation period which began in 2003 had expired in 2015 and does not avail the defendant.

[197] This finding also applies to the submission by the defendant that there was an acknowledgement of her title by the first claimant who gave evidence that Ajani submitted a formal offer to purchase the property on her behalf.

[198] In **J A Pye (Oxford) Ltd**, citing the dictum of Lord Diplock in the Privy Council case of **Ocean Estates Ltd v Pinder**⁴⁰, the learned judge explained that there is no inconsistency between a [possessor] being willing to pay the paper owner for their occupation of the land, if asked, and the possessor remaining in possession. The Court said that an “*admission of title by the squatter is not inconsistent with the squatter being in possession in the meantime.*”⁴¹ It has been noted that the necessary intention to possess may usually be inferred by a Court from the circumstances of the physical possession and the type of conduct of the possessor.⁴² The evidence of physical possession and the conduct of the Clarkes has already been dealt with.

[199] In **International Hotels Jamaica Ltd v Proprietors Strata Plan No.461**, Morrison, JA (as he then was) discussed the case of **Edginton v Clark and Another**, in which:

“... the plaintiff went into possession of certain freehold property in 1947. Some seven years later, in 1954, he wrote to a person who he knew to be the agent for the owner of the property, though he did not know the identity of the owner, making an offer to purchase the property, “subject to contract”. A few months later, no response having been received, he wrote again, this time increasing his offer. The increased offer was accepted and the plaintiff in fact paid a deposit of 10% of the purchase price, but, for reasons which

⁴⁰ [1969] 2 AC 19 at page 24

⁴¹ Para 46

⁴² **J A Pye (Oxford) Ltd and another v Graham and another** [2003] 1 AC 419, para 76; **Arthur McCoy & Marcia McCoy v Fitzroy Glispie** [2012] JMSC Civ 80, para 43

are not relevant, the sale did not go through and the deposit was in due course returned to him. However, the plaintiff remained in possession of the property and, in 1961, some 14 years after he had originally gone into possession, the question arose whether he had acquired title by adverse possession against the owner, the limitation period being 12 years.

[97] The Court of Appeal upheld the trial judge's finding that the plaintiff's two letters offering to purchase the property amounted to an acknowledgment of title, so as to prevent his acquisition of an adverse possessory title against the owner. Delivering the judgment of the court, Upjohn LJ said this (at page 471):

"Apart altogether from authority, it would seem to be a very clear case and it so appealed to the learned county court judge. If a man makes an offer to purchase freehold property, even though it be subject to contract, he is quite clearly saying that as between himself and the person to whom he makes the offer, he realises that the offeree has a better title to the freehold land than himself, and that would seem to be the plainest possible form of acknowledgment."

*[98] However, the learned judge went on to observe that "it is not possible to lay down any general rule on what constitutes an acknowledgment...whether a particular writing amounts to an acknowledgment must depend on the true construction of the document in all the surrounding circumstances". This dictum was cited with approval by Arden LJ in *Ofulue v Bossert*, in which the learned judge said (at para. [66]) that "[i]t is a question of interpretation whether an allegation in a pleading constitutes an acknowledgment for the purpose of s 29 of the [Limitation Act]".*

[200] I adopt the instruction from this passage that whether a particular writing amounts to an acknowledgment must depend on the true construction of the document in all the surrounding circumstances. It is a question of interpretation whether an allegation in a pleading constitutes an acknowledgement for the purposes of sections 23 and 24 of the Limitation Act, 1939 which state:

23. - (1) Where there has accrued any right of action (including a foreclosure action) to recover land or an advowson or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and - (a) the person in possession of the land, benefice or personal property acknowledges the title of the person to whom the right of action has accrued...the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.

24. - (1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment. (2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person by whom it is required to be made under the last foregoing section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.”

[201] The defendant submits that Ajani’s offer to purchase the property as a result of his mother’s situation, and on her behalf, amounts to an acknowledgment of title to land. Giving a new starting point for the running of time under the Limitation of Actions Act, from the date of the offer to purchase in May 2022.

[202] The offer was rejected; however, this is of no moment as twelve years had already expired when this offer was made. The title upon which the defendant relied had already been extinguished.

[203] Even if this court were to accept the defendant’s documentary evidence as being properly supportive of her claim, any acts on which she sought to rely after the limitation period had expired in 2015 could not avail her in advancing her case that her claim is not statute-barred. It is the ones before that date which would be material.

[204] In **Winnifred Fullwood v Paulette Curchar**⁴³ it was stated by McDonald-Bishop, JA(Ag.) (as she then was):

[36] So it is well settled on strong and binding authority that the combined effect of sections 3, 14 and 30 of the Act is that Mrs Curchar, a registered proprietor of the property, can lose her right to recover possession of it on the basis of the operation of the statute of limitations against her.

“[42] These authorities have forcefully brought home the point that a claimant in a case for recovery of possession must state the basis of his claim which is his title to the property and once that is laid on the table (so to speak) then the statute of limitations will come into play and may operate to bar a stale claim regardless of whether or not the statute is expressly pleaded by a defendant in possession. So, the statute automatically arises for consideration once the title to the land is being relied on to ground the

⁴³ [2015] JMCA Civ 37 at 36

claim and its operation is not dependent on whether the defendant chooses to avail himself of it. A defendant may simply exploit the advantage afforded by the statute without any express reliance on it. This is understandably so because as the authorities have established, the statute goes to the root of the claim or to the right to bring the claim and not to the remedy. It is thus a hurdle that is set up by law in the path of the claimant that can affect his claim rather than one to be set up by a defendant to defeat the claim.”

The burden of proof

- [205] The burden of proof is on the defendant and not on the first claimant to establish her claim for recovery of possession based on a valid paper title. The consideration for the court is the strength of the defendant’s title to the property and her right to possession of it.
- [206] There is no difficulty in finding that the defendant moved out of the property for more than 12 years before she sought to recover possession. There were no possessions belonging to her remaining at the property.
- [207] The counterclaim for recovery of possession fails on the combined effect of sections 3, 14 and 30 of the Limitations of Actions Act (“the Act”) which is that a registered proprietor of land may be dispossessed and lose her title and accompanying right to recover possession of same, by virtue of the operation of the statute of limitations.
- [208] The defendant did nothing to stop time running until she served her counterclaim for recovery of possession. She did not physically enter the land and take possession of it. This is largely because of the dishonest view that both Mr and Mrs Clarke were her licensees, despite the belated position that Mr Clarke was a beneficial co-owner. The evidence of the intention to serve and the service of a notice to quit on the first claimant is proof of this.
- [209] The law is clearly set down in the reasoning in **Fullwood v Curchar** below:

[92] The law is that where the right of entry of a co-tenant has accrued more than 12 years before action was brought, that co-tenant not in possession is barred and his title extinguished whatever the nature of the other co-

tenant's possession. This was what would have transpired in this case. Mrs Curchar's claim was barred by operation of law, her title was extinguished and once it was extinguished, it could not have been revived. Her title was, therefore, not subsisting when she filed the claim against Miss Fullwood in 2013.

[93] Miss Fullwood, as the defendant to that claim for recovery of possession, could have properly relied on the fact of extinction of Mrs Curchar's title, be it through discontinuance of possession by Mrs Curchar or dispossession by Mr Curchar, to defeat the claim. This was so regardless of her status on the property in 2013, because the statute of limitations goes to the root of Mrs Curchar's claim and not to Miss Fullwood's defence. Miss Fullwood was, in fact, saying in defence to Mrs Curchar: "you are a stranger to the land that is in my possession and you have no locus standi to claim to recover possession from me as a matter of law". That was within her legal right to assert because Mrs Curchar, having no subsisting title to the property, would, in effect, be a stranger coming to take her off the property. Mrs Curchar would have had no better right to possession than she would have had.

[94] Miss Fullwood was quite entitled, given sections 3 and 30 of the Limitation of Actions Act, to use it as a 'shield' as she did in the defence of the claim because it was available for her protection regardless of the fact that it was not yet decided that she had any beneficial interest in the property as the spouse, personal representative and/or beneficiary of Mr Curchar.

[95] It is clear on the totality of the evidence that Mrs Curchar would have failed to prove, on a balance of probabilities, that her title had not been extinguished by the time she filed her claim in 2013. Indeed, even if the burden of proof was on Miss Fullwood to prove that Mrs Curchar had discontinued possession or had been dispossessed, the claim should have failed. Simply put, Mrs Curchar had not cleared that legal obstacle presented by the statute of limitations in barring her claim that was coming more than 12 years after her right to re-enter had accrued. As such, her claim for recovery of possession should have failed as a matter of fact and law.

[210] There is not much that I could add to that extremely lucid statement of the law which is applicable to the pleadings and evidence in this case. In all the circumstances, having considered the law, evidence and submission, the defendant has failed to prove on a balance of probabilities that she has a valid and subsisting title not extinguished by the time she filed her counterclaim. The counterclaim fails.

[211] Orders:

1. Judgment for the Claimants.
2. The court declares that the claimants are entitled by way of adverse possession to the entire legal and beneficial interest in all that parcel of land Part of 80 Molynes Road in the parish of St. Andrew being the land comprised in the Certificate of Title registered at Volume 1260 Folio 14 of the Register book of Titles.
3. The court declares that the Certificate of Title in order number one has been extinguished by operation of law.
4. The court declares that the defendant is barred, pursuant to the provisions of the Limitation of Actions Act and order of this Court, from pursuing any action or claim against any person who is entitled to the property herein described.
5. An Injunction is hereby granted restraining the defendant her servants and or agents or anyone purporting to act on her behalf or on behalf of her heirs, successors and assigns from entering on and taking any steps to take possession of or otherwise interfere with the Property herein described.
6. This court orders that the Registrar of Titles cancel the Certificate of Title registered at Volume 1260 Folio 14 of the Register Book of Titles and issues a new Certificate of Title in duplicate in the name of the first claimant Georgia Campbell-Clarke, Hairdresser of 22 Mapleleaf Avenue, Kingston 10.
7. Costs to the claimants to be taxed if not agreed.
8. Liberty to apply.

Wint-Blair, J