



[2023] JMSC Civ 212

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2017HCV03394

BETWEEN	ORPHA REID	CLAIMANT
AND	DELLIE MAY FOSTER (Executor Estate Lucina Melvina McIntosh, deceased)	DEFENDANT
AND	VINCENT ANDERSON	INTERESTED PARTY

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2018HCV02546

BETWEEN	DELLIE MAY FOSTER (Executor Estate Lucina Melvina McIntosh, deceased)	1ST CLAIMANT
AND	VINCENT ANDERSON	2ND CLAIMANT
AND	ORPHA REID (Otherwise called "MUFFETT")	DEFENDANT

IN OPEN COURT

Dr. Lloyd Barnett, Mr. Weiden Daley and Ms. Deniece Beaumont Walters instructed by Hart Muirhead Fatta for the Claimant in Claim No. 2017 HCV 03394 and the Defendant in Claim No. 2018 HCV 02546

Ms. Gillian Mullings instructed by Naylor & Mullings for the Defendant and Interested Party in Claim No. 2017 HCV 03394 and the Claimants in Claim No. 2018 HCV 02546

Heard: March 13, 14, 2023 and November 3, 2023.

Land Law – Recovery of Possession of Property – Whether the Title Holder is the Legal Owner of the Disputed Property – Whether the registered title is extinguished by the operation of the Limitation of Actions Act – Section 3 and 30 of the Limitation of Actions Act- Proprietary Estoppel – Whether the Claimant can rely on proprietary estoppel

WONG-SMALL, J (Ag.)

INTRODUCTION

- [1]** The consolidated claims in this matter concern the possession and ownership of all that parcel of land known as Number Ten Elgin Road situate at Brentford Town in the parish of Saint Andrew previously registered at Volume 969 Folio 364 of the Register Book of Titles and currently registered at Volume 1503 Folio 565 of the Register Book of Titles (hereinafter the disputed property).
- [2]** At all material times, the registered proprietor of the disputed property was Ms. Lucina Melvina McIntosh. Subsequent to her death on the 12th day of March, 1995, a Grant of Probate was obtained in her estate by Mr. Keith Jarrett, the Executor of her Last Will and Testament, on the 15th day of November, 2010. Thereafter, Mr. Keith Jarrett was registered on transmission on the title on the 1st day of November, 2016.
- [3]** Pursuant to an Agreement for Sale dated August 22, 2011, Mr. Keith Jarrett entered into an agreement with Mr. Vincent Anderson for the sale of the disputed property. The purchase price was Four Million Dollars (\$4,000,000.00) and a deposit of Four Hundred Thousand Dollars (\$400,000.00) was paid over to Mr. Jarrett. The said Agreement for Sale provided for vacant possession of the disputed property and consequently, to-date, the sale remains incomplete.
- [4]** By way of a Fixed Date Claim Form filed on October 24, 2017 and an Amended Fixed Date Claim Form filed on October 27, 2017, Ms. Orpha Reid commenced

Claim No. 2017 HCV 03394 in which she primarily seeks a declaration that she is entitled to possession and ownership of the disputed property as well as orders for the disputed property to be transferred to her. Ms. Reid claimed that she entered into possession of the disputed property in 1996; and that she has been in continuous, peaceful and undisturbed possession of the entire property for over twenty years.

- [5] In November 2011, Mr. Keith Jarrett commenced a claim at the Parish Court against Ms. Orpha Reid to recover possession of the part of the disputed property occupied by her (Plaint No. 5903 of 2011). On May 1, 2018, Her Honour Ms. Stephany Orr (as she then was), granted an application for the said matter to be transferred to the Supreme Court (Claim No. 2018 HCV 02546). By way of Particulars of Claim filed January 7, 2018 and Amended Particulars of Claim filed on November 12, 2019, Mr. Jarrett and the Interested Party seek to recover possession of the said property.
- [6] On July 28, 2022, Ms. Dellie May Foster filed a Notice of Application for Court Orders in which she sought orders for Mr. Jarrett to be relieved of his obligations in these consolidated claims as a result of his mental status and that she be appointed as a substitute for Mr. Jarrett to handle the consolidated claims on the behalf of the said Estate. These orders were subsequently granted.
- [7] To effectively deal with the issues that arise in this matter, I have thought it prudent to outline the evidence put forward by the respective parties in support of their claims.

THE CLAIMANT'S CASE

- [8] Ms. Orpha Reid's case was supported by her evidence and that of her two witnesses, Mr. Barrington Duncan and Mr. Derrick Crooks. Her evidence was that she peacefully entered into possession of the disputed property in 1996 and lived there with her sister until her death in 2013. Since that time, she had exclusive,

sole, peaceful and continuous possession of the disputed property. She also stated that in that period she gave birth to three (3) of her four (4) children.

- [9]** She further stated that when she entered into possession, there were two (2) concrete houses and one (1) wooden house on the disputed property with sixteen (16) bedrooms in total and that while living there, she treated it as her own and exercised various acts of ownership over it. These included constructing a concrete wall and a gate along the property's Elgin Road boundary; carrying out repairs and works of improvement to the buildings on the property; installing four (4) private toilets; installing wastewater pipes; installing grills on most of the room windows and the verandas; installing new windows; and paving the yard. In so doing, she spent in excess of \$1,300,000.00. She also stated that she has personally paid all the property taxes for the property from 2004 to 2022.
- [10]** In cross examination Ms. Reid, she gave more details of the improvements and repairs she did to the disputed property and when they were done. She asserted that she these from she began residing there in 1996. She installed toilets and waste water pipes in 2000. Regarding the construction of the wall, Ms. Reid testified that she began the construction in or about 1999 and it was completed in 2000.
- [11]** She also gave evidence that glass panes were installed in the windows in the front concrete house and new windows were installed in the second concrete house. Installation of the grills began in 2008 and those installations have been completed. Paving of the yard began in 2022. As it relates to her renting of the premises, Ms. Reid indicated that between 1996 to 1997, she rented out the bedrooms on the premises that she did not use.
- [12]** She denied suggestions that she first came to the disputed property in 2005 as the common law spouse of Alexander Raby to whom a part of the property was rented. She stated that she was involved in a common law relationship with Mr. Alexander

Raby between 2001 to 2006, however, during that time, she lived at the disputed property and he lived at 11 Penrith Road in the parish of Kingston.

- [13] Mr. Barrington Duncan gave evidence that he became one of Ms. Reid's tenants at the disputed property in 2008. He knew that Ms. Reid had resided on the disputed property since the late 1990s and since that time to present, he had observed her to be in peaceful, continuous, sole and exclusive possession and control of the property. He also stated that while he was a tenant on the property, he was aware that all the tenants residing there paid rent and a portion of the water bill to Ms. Reid.
- [14] Mr. Duncan also averred that he had observed Ms. Reid carrying out acts of ownership and/or possession on the disputed property including constructing a concrete wall and a gate along the Elgin Road boundary of the property; carrying out repairs and works of improvement to the buildings on the property such as installing waste water pipes, grilling most of the room windows and the two verandas, installing new windows, paving the yard, renting rooms to tenants, repairing a leak in the roof of his room and paying the water bills.
- [15] The evidence of Mr. Derrick Crooks was that he lived at 14 Elgin Road in the parish of St. Andrew from 1999 to 2013 and that he knew Ms. Reid who lived at 10 Elgin Road which is two (2) lots away from his home. In that period, he also indicated that he had observed Ms. Reid to be in peaceful, continuous, sole and exclusive possession and control of the disputed property. He also observed her exercising acts of ownership over the property inclusive of constructing a concrete wall and a gate along the Elgin Road boundary, carrying out repairs and improvements to the buildings on the property by installing waste water pipes, grilling most of the room windows and the two verandas and renting rooms to tenants.

THE DEFENDANT'S CASE

- [16] Ms. Dellie May Foster was the primary witness on her case and her evidence was that she is a beneficiary of the Estate of Lucina Melvina McIntosh. In the Last Will

and Testament of Lucina Melvina McIntosh, she is referred to as “Delsie Foster” and that before Ms. McIntosh died, the disputed property was devised to herself and other persons.

[17] Ms. Foster stated that Ms. McIntosh lived on the property until 1988 when she became ill. Thereafter in 1989, she relocated Ms. McIntosh to her place of residence. She began managing the property in 1988 when the Deceased became ill and she had been managing it until 2008. From 1994 to 2011, she managed the property and consulted with the Executor of the Estate, Mr. Keith Jarrett. She stated that she and her brother, Mr. Headley Foster, rented the property to several tenants.

[18] Her evidence was that Ms. Reid moved to the property in 2005 and lived there until 2006. She further stated that in 2006, Ms. Reid and another tenant, Lorna, assaulted her because she demanded rent from them. Thereafter, Ms. Reid left the property, but she returned in 2007 without Ms. Foster’s permission.

[19] Ms. Foster further stated that in 2008 Ms. Reid began unsettling the other tenants on the premises as she was issuing threats, using violence against them and used force to take control of the property. She also alleged that persons who were allegedly involved in illegal activities began to use the property as a base. Ms. Reid also threatened to kill her if she returned there.

[20] She served Ms. Reid with a notice to quit in 2008 and after that she could no longer visit the disputed property as she feared for her safety due to the threats and violent behaviour that was being displayed by Ms. Reid and the other persons. As such, she turned to the Executor, Mr. Jarrett who initiated legal proceedings in 2011 to have Ms. Reid removed from the property. In 2017, the matter was transferred to the Supreme Court after Ms. Reid filed a claim there for adverse possession.

[21] She denied that Ms. Reid was living on the property from 1996. She was aware that Ms. Reid came to the disputed property in 2005 and left in 2006 because she had an agent at the property from 2001 who rented a section of the property to Ms.

Reid's common law husband. She also gave evidence that she had visited the property and seen Ms. Reid and her common law husband there.

- [22] She also denied that Ms. Reid was responsible for the construction of the wall at the front of the property or the installation of the gate. She stated that her brother personally built the wall and that the gate had been there from she started visiting the property. She asserted that her aunt funded the installation of the left side of gate, but her brother was the person who carried out the work and made the metal gate. She also stated that bathroom fixtures were installed on the property by her brother when it was first built.
- [23] Mr. Rowan Mullings, Attorney-at-Law gave evidence that he acts on behalf of the interested party Mr. Vincent Anderson by virtue of a Power of Attorney. He stated that Mr. Anderson signed an Agreement for Sale in relation to the disputed property on August 22, 2011 pursuant to which, he paid a deposit of \$400,000.00. He further stated that the sale has remained incomplete as the Vendor and Executor of the Estate, Mr. Keith Jarrett, sought to remove the occupants from the property. Notwithstanding, the purchaser is still interested in purchasing the property.

SUBMISSIONS

- [24] Counsel for the Claimant, Dr. Barnett, submitted that the requisite elements to prove adverse possession had been satisfied. Counsel stated that the Claimant had been in peaceful, open, undisturbed and exclusive possession of the disputed property since 1993 and therefore, she had been in possession for over the requisite twelve (12) years.
- [25] Counsel argued that the Claimant had an intention to exclude the paper owner as evidenced by her construction of a concrete wall and a gate along the property's Elgin Road boundary. Counsel further contended that the Claimant had exercised acts of ownership, namely carrying out repairs and works of improvement; installing waste water pipes; grilling most of the room windows; installing new windows; and paving the yard. It was submitted that the Claimant's payment of the

property taxes for the disputed property also serves as proof of her intention to possess.

- [26] Counsel, relied on **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ 6, and submitted that as the Claimant had incurred expenses by carrying out repairs and works of improvement on the disputed property, it would be unconscionable for the Estate of Lucina Melvina McIntosh to now seek to recover possession thereof. Counsel argued that from 1993 to 2011 neither Ms. Lucina McIntosh nor any representative of her Estate sought to recover possession of the property; as such, it was submitted that there was acquiescence with the actions of the Claimant in respect of the property.
- [27] Counsel on behalf of Ms. Dellie May Foster stated that as the Estate of Lucina Melvina McIntosh is the owner of the disputed property, the estate can seek to recover possession of same. Counsel submitted that Ms. Dellie May Foster has legal standing to commence the present claim as her evidence indicated that she was in possession of the disputed property prior to the death of Ms. McIntosh and afterwards. It was further submitted that Ms. Foster has legal standing in this matter as she is a beneficiary of the Estate of Lucina Melvina McIntosh. In support of that submission, reliance was placed on the case of **Samuels v Karenga** [2019] JMCA App 10 wherein reference was made to **George Mobray v Andrew Joel Williams** [2012] JMCA Civ 26.
- [28] Counsel argued that in **Samuels v Karenga** (supra) Sinclair-Haynes JA accepted the view of the Parish Court Judge who found that although Mrs. Karenga had no registered interest in the unadministered estate, as she was a beneficiary of said estate, she had a right to sue.
- [29] With regard to the Interested Party and 2nd Claimant, Mr. Vincent Anderson, it was submitted that he has legal standing to bring this claim as a result of the Agreement for Sale that was executed in respect of the disputed property. To corroborate this

position, the case of **Lysaght v Edwards** (1876) 2 Ch 499 S was cited. In that case, Jessel MR stated that:

“It must, therefore, be considered to be established that the vendor is a constructive trustee for the purchaser of the estate from the moment the contract is entered into.”

- [30] As it relates to the claim, Counsel contended that the evidence adduced at trial does not prove that Ms. Reid was ever in open, undisturbed, exclusive possession of the disputed property for a period of twelve (12) years. It was submitted that Ms. Foster’s evidence was that she had managed the disputed property from 1994 to 2011. Further, she stopped visiting said property in 2007 or 2008. Counsel asserted that although it is alleged that Ms. Reid was in possession of the disputed property during the time period of 1996-2007, as Ms. Foster was managing the disputed property during the aforesaid time period, Ms. Reid’s assertion as it relates to this period of possession holds no weight. Counsel submitted that according to the principles stated in **JA Pye (Oxford) Ltd and another v Graham and another** (supra), Ms. Foster and Ms. Reid could not be in possession of the disputed property at the same time.
- [31] Counsel contended that as Ms. Foster was kept away from the disputed property from 2007 to 2011 due to acts of violence and/or force caused by Ms. Reid, the authority of **R v Oxfordshire County Council exp Sunningwell Parish Council** [2000] 1 AC 335 indicates that Ms. Reid would not be able to benefit from that time period when considering factual possession of the property.
- [32] On the issue of intention to possess, Counsel stated that Ms. Reid’s payment of property taxes do not amount to an intention to possess. Although Ms. Reid asserted that she began paying property taxes in 2004, the evidence indicates that the payments were made in 2011 retroactively to 2004. Counsel argued that any intention to possess arising from the payment of property taxes could not have arisen until 2011.

- [33]** Counsel submitted that Ms. Reid's submissions place heavy reliance on the carrying out of repairs and improvements on the disputed property. However, Counsel stated that there is no documentary evidence before the court as to when repairs or works of improvement began taking place at the said property.
- [34]** It was submitted that in the Defence filed on behalf of Ms. Reid in 2014, Ms. Reid recognised one Ms. Millicent Parkinson as the owner of the disputed property at that time. Counsel argued that Ms. Reid made no claims of ownership or possessory rights until 2017 when Claim No. 2017 HCV 03394 was initiated.
- [35]** Counsel submitted that the Estate of Lucina Melvina McIntosh continued in possession of the disputed property through Ms. Foster in the following ways:
- a. Ms. Foster managed the disputed property directly until 2008 and through an agent, Ms. Velma Allen, up to 2011;
 - b. Ms. Foster and her brother built a wall around the premises;
 - c. Ms. Foster served Ms. Reid with a notice to quit in 2008;
 - d. Ms. Foster requested for the Executor of the estate to remove Ms. Reid on multiple occasions; and
 - e. Ms. Foster attended court from 2011 to present in proceedings for the purpose of removing Ms. Reid from the disputed property.

THE ISSUES

- [36]** The primary issues which arise for the court's determination in this matter are:
- (a) Whether pursuant to the Limitation of Actions Act, the registered title to the disputed property has been extinguished due to the actions of Orpha Reid; and
 - (b) Whether the Orpha Reid has obtained an equitable interest in the property by virtue of proprietary estoppel.

LAW AND ANALYSIS

[37] In the instant matter, Ms. Reid has asserted that she has been in open, continuous, exclusive and undisturbed possession of the disputed property for over twenty (20) years. Thus, her claim is that the paper owner of the disputed property, the Estate of Lucina Melvina McIntosh, is barred from recovering the disputed property as she has acquired a possessory title over same. As Ms. Reid has asserted ownership of the disputed property, the burden lies with her to prove her case on a balance of probabilities.

Whether pursuant to the Limitation of Actions Act, the registered title to the disputed property has been extinguished due to the actions of Orpha Reid

[38] As the Estate of Lucina Melvina McIntosh is the registered proprietor of the disputed property, it is prudent to examine the Registration of Titles Act which speaks to the impact of a registered title to property. Section 68 of the Registration of Titles Act (hereinafter referred to as “the RTA”) stipulates that a Certificate of Title is conclusive evidence that the person or entity named therein is the registered proprietor of all that parcel of land described in same. However, notwithstanding the indefeasibility of a registered title, the same Section makes it clear that it is subject to exceptions such as the operation of the statute of limitations.

[39] Section 68 of the RTA provides that:

*“No certificate of Title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, or in the proceedings previous to the registration of the certificate; and every certificate of title issued under any of the provisions herein contained shall be received in all courts as evidence of the particulars therein set forth, and of the entry thereof in the Register Book, and shall, **subject to the subsequent operation of any statute of limitations**, be conclusive evidence that the person named in such certificate as the proprietor of or having any estate*

or interest in, or power to appoint or dispose of the land therein described is seized or possessed of such estate or interest or has such power.” (Emphasis mine)

[40] The Limitation of Actions Act provides that a paper owner is barred from recovering property either by entry or bringing a claim after a period of twelve (12) years has passed. The relevant portions of the statute are sections 3 and 30 which state as follows:

“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 same. ...

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.”

[41] In defining adverse possession, Lord Millett in the case of **Ramnarace v Lutchman** [2001] 1 WLR 1651 pronounced:

“Generally speaking, adverse possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse if it is enjoyed by a lawful title or with the consent of the true owner...”

[42] In **JA Pye (Oxford) Ltd and another v Graham and another** [2002] UKHL 30 Lord Browne-Wilkinson at paragraph 40 examined the elements necessary to

prove adverse possession and adopted the view of Slade J in **Powell v McFarlane** (1977) 38 P&CR 452. His Lordship postulated that:

“To be pedantic, the problem could be avoided by saying there are two elements necessary for legal possession: (1) a sufficient degree of physical custody and control (‘factual possession’); (2) an intention to exercise such custody and control on one’s own behalf and for one’s own benefit (‘intention to possess’). What is crucial is to understand that, without the requisite intention, in law there can be no possession.”

[43] In addition, as it relates to what is considered factual possession, Lord Browne-Wilkinson at paragraph 41 of **JA Pye (Oxford) Ltd and another v Graham and another** (supra) agreed with the findings of Slade J in **Powell v McFarlane** (supra) and stated:

“In Powell’s case (1977) 38 P&CR 452 at 470–471 Slade J said:

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

[44] Further, with respect to intention to possess, Lord Browne-Wilkinson accepted that what was required is an intention to possess and not an intention to own or acquire ownership. At paragraph 43 of the judgment, His Lordship stated:

“Slade J reformulated the requirement (to my mind correctly) as requiring an—

‘intention, in one’s own name and on one’s own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow.’”

Additionally, at paragraph 45 of the said authority, His Lordship determined that the sufficiency of the squatter's possession does not depend on the intention of the paper owner of the subject property.

- [45]** It is clear from the statutes and common law authorities cited above, for the court to find that the paper title owners have been dispossessed, Ms. Reid must prove that she has been in factual possession of the disputed property and had an intention to possess same for at least twelve (12) years.
- [46]** Based on the evidence presented, there is firstly, a clear dispute between the parties as to when and how Ms. Reid entered into possession of the property. While Counsel for Ms. Reid had submitted that she had been in possession of the property since 1993, her evidence is that she moved to the property in 1996 and that she has been in sole, open, peaceful and undisturbed possession of same since that time. In contrast, Ms. Foster asserted that Ms. Reid moved to the property in 2005 when a section of the property was rented to her common law husband, Mr. Alexander Raby. Ms. Foster further stated that Ms. Reid actually took control of the property in 2008 through acts of threats and violence. It is also clear that Ms. Reid's claim that she has exercised acts of possession over the disputed property for over 12 years has been similarly challenged.
- [47]** In order for the court to find in favour of the Claimant, I must find that I accept her evidence over that of the Defendant especially as it relates to the facts in issue and that I am satisfied to the required standard. Against this background, I therefore conducted a detailed analysis of her evidence and that of her witnesses.
- [48]** Having duly considered the evidence, I find that the evidence of Ms. Reid is unreliable as it contains inconsistencies which impact her credibility. It is noted that she gave conflicting evidence about the number of board/ wooden houses on the property when she first went there, firstly stating that there was one but later under cross examination claiming there were four and also as to whether there was a single restroom in use at the time. Her attempt to explain the former inconsistency

by claiming that her statement should have said one set of wooden houses did not appear in any way to be a truthful answer.

[49] In addition to this apparent dishonesty, it is noted that initially she denied knowing Mr. Alexander Raby but later admitted that he was her common law husband between 2000 and 2006 and that he was the father of two children of her children. In doing so, she claimed to have not heard the name correctly when first asked if she knew him. Her proximity to the Bench at the time the question was asked left me in no doubt that she was not being truthful as to her explanation. At no time did she indicate that she had not heard the name when the question was asked.

[50] Most importantly, Ms. Reid provided no evidence except her word as to when she first moved to the disputed property and took possession of it as she claimed. In particular, it is noted that there is no documentary evidence as to when Ms. Reid first moved to the property even though such evidence appeared to be available to her. Ms. Reid's evidence was that three (3) of her children were born while she resided on the property, however, she did not deign to provide the court with the birth certificate of any of the said children. It is a known fact that there is a section of every birth certificate which allows for the place of residence of each parent at the time of the child's birth to be stated. At the time of the trial, the eldest child was twenty (20) years old and the other two – twins, were thirteen (13) years old. The particulars on their birth certificates could have provided some documentary support to her claim as to the length of her possession.

[51] In fact, Ms. Reid stated that she did not provide the court with any of the birth certificates as she was not asked to bring them. Also, the birth certificate of the first child who was born while she lived at the property does not contain the address for the property. Interestingly, her evidence was that that child's birth certificate solely states the address of the child's father. I do not find this explanation convincing and I find the latter claim to be untrue. A birth certificate may not have a father's particulars but it must have that of the mother.

- [52]** The evidence of her witnesses was found to be similarly unreliable as there are also various discrepancies and inconsistencies between their evidence and that of Ms. Reid. Although the Witness Statements of Barrington Duncan and Derrick Crooks indicate that they each had observed Ms. Reid in continuous, open, undisturbed, peaceful and sole possession and control of the property in excess of fourteen (14) years, under cross-examination these statements by both of the witnesses proved to be patently untrue.
- [53]** When tested under cross-examination, it was glaringly obvious that Mr. Duncan cannot speak with any certainty as to anything that occurred within the confines of the disputed property prior to him moving there in 2008 and further that his knowledge of the Claimant and the disputed property did not begin until after he became a tenant there.
- [54]** Although he claimed to have met Ms. Reid twenty years ago, he admitted that the first time he had a conversation with her was in 2008 when he was seeking a place to rent. Although he would see her from time to time and greet her, he only knew that she lived “round the road”. Prior to 2008, he had never visited the property, he had only travelled past it and he did not know in which of the buildings Ms. Reid lived.
- [55]** In cross-examination, he also admitted that he did not see any acts of possession until after he had moved onto the disputed property in 2008. The repairs and improvements he saw such as the installation of grills and windows were done after he became a tenant. At the conclusion of his evidence, he conceded that prior to him moving to the property in 2008, he is unable to speak to anything that took place on said property.
- [56]** When asked about his statements that he knew about the property before he moved there in 2008, he stated that it was simply an awareness, that is, when you live in a particular community you would have a good understanding of it. I did not find this explanation at all convincing.

- [57]** It is also noted that there was a material inconsistency between his evidence and that of Ms. Reid. Whereas Ms. Reid denied that she and Mr. Alexander Raby, her then common law husband, ever lived together at the disputed property, Mr. Duncan, her witness, testified that Mr. Raby did live at the disputed property with Ms. Reid. This statement seemingly corroborates the evidence given by Ms. Foster as to the circumstances under which Ms. Reid moved to the property.
- [58]** Similarly, the evidence of Mr. Crooks was not found to be helpful. His evidence generally was that since he met Ms. Reid in 1999, he knew her to live at the disputed property and control same. However, under cross-examination, it was revealed that he had no personal knowledge of the facts of which he purported to give evidence. He was unable to say in which house Ms. Reid and her sister lived on the property as he does not reside on the property.
- [59]** It was also revealed that contrary to his witness statement, he had never observed grills being put in and waste water pipes being installed. He was told by a friend who lived there that these installations were done. As it relates to the construction of the wall, he stated that he saw the walls being constructed ten (10) years after he moved to the area. He then indicated that he had lived there since 1990.
- [60]** He also had not observed Ms. Reid renting the property to tenants, he had asked his friend who lived on the property about the matter. Additionally, he stated that everything that he knew about the instant case was based on what Ms. Reid had told him. He concluded his testimony by agreeing that the statements made in his witness statement that he had observed Ms. Reid treating the property as her own and managing the property by exercising the usual acts of ownership outlined therein was based on what his friend had told him.
- [61]** Upon a review of the evidence given by both Mr. Duncan and Mr. Crooks, I find firstly that as the former has no knowledge of the disputed property before 2008, he can give no evidence in support of the Claimant's claim that she has been in continuous, open, undisturbed, peaceful and sole possession and control of the

property since 1996. As it relates to the latter, it is clear that he had no first-hand knowledge of anything that took place on the disputed property as he has admitted that his evidence is based on what he was told by Ms. Reid and another person.

[62] I find that the evidence of Mr. Crooks and Mr. Duncan does not assist the court with determining when Ms. Reid entered into possession of the disputed property. There is therefore no substantiated evidence before the court as to when Ms. Reid came to live on the property.

[63] In examining the evidence of Ms. Reid as to how she came into possession of the property, I also did not find it convincing or credible. While her witness statement makes no mention of other tenants and/or persons apart from her sister, Ms. Keisha Reid, residing on the property when she moved there in 1996, under cross-examination she revealed that there were several persons already residing on the property then. I found it highly improbable that a stranger was able to move to a property that was already inhabited by other persons and instantly be able to peacefully possess and control the entire property and no explanation was given as to how she was able to do this.

[64] For this reason, I find that I was not convinced that she entered into possession of the entire property in 1996 as she has stated. Also, her evidence indicates a lack of knowledge of the layout of specific sections of the property in 1996 which is unexpected in a person in possession and control of same. When questioned about how many bathrooms and kitchens existed on the property in 1996, her evidence was that she thought there was a bathroom to the rear of the property and she was unsure if there were any kitchens inside of the front concrete house.

[65] I take into consideration that there is also no substantiated evidence to support the Defendant's claim as to when and how the Claimant came into possession of the disputed property. Save for the documentation exhibited in relation to the previous and current registered titles for the disputed property, the administration of the Estate of Lucina Melvina McIntosh and the Agreement for Sale concerning the

disputed property, there is only the bald assertion made by Ms. Foster that Ms. Reid moved to the property when a section of it was rented to her then common law husband Alexander Raby in 2005 by Ms. Foster's agent, Ms. Velma Allen.

[66] Furthermore, while Ms. Foster claimed that Ms. Reid began to control the property in 2008 through threats and acts of violence, the court has been provided with no documentary evidence to buttress this claim. Ms. Foster spoke of tenants being killed on the property as well as herself being assaulted there by Ms. Reid and another tenant. However, not one police report, witness statement or other documentation has been presented to the court in support of these allegations. The court is therefore not able to rely on these statements and no regard will be given to them.

[67] In seeking to prove that she has had factual possession as well as an intention to possess the property for over twelve (12) years, Ms. Reid asserted that she exercised acts of possession, namely:

- a) Payment of property taxes;
- b) Building a concrete wall and installing a gate;
- c) Improving the property by carrying out repairs and installing fixtures such as windows and toilets; and
- d) Putting tenants in place and collecting rent.

[68] In respect of Ms. Reid's claim that she has paid the property taxes for the property from her own resources for the time period of 2004 to 2011, examination of the copies of the property tax payment advice admitted in evidence showed that the property taxes for 2004 to 2005 up to 2010 to 2011 were all paid on the same date, February 18, 2011. While Ms. Reid maintained under cross examination that she began paying property taxes for the disputed property in 2004, that statement is clearly untrue as it is inconsistent with the property tax payment advice for the tax period of 2004 to 2011 as exhibited by her.

- [69] The authority of **Richardson v Lawrence (1966) 10 WIR 234**, at pages 238 and 239 is instructive on the consideration that the court is to give to the payment of property taxes in such cases. In that case, Wooding CJ indicated that taxes are not necessarily payable by an owner or an occupier of land, taxes can be paid by anyone who chooses to pay for it. Moreover, the person named on the tax roll is not conclusive evidence as to the owner of said property. This is because the person so named could have already died or been dispossessed. Payment of property taxes is therefore not conclusive as an act of possession.
- [70] In light of the principles laid down in **Richardson v Lawrence** (supra), I find that the documents exhibited by Ms. Reid showing the payment of property taxes from 2004 are of no moment. The property tax payment advice themselves indicate that the owner and possessor of the property is Ms. Millicent Parkinson and clearly show that Ms. Reid did not begin paying property taxes for the property until February 2011. I do not find that these documents corroborate her claim that she had an intention to possess and had been in possession of the property for the requisite time period of twelve (12) years.
- [71] On the issue of the construction of the wall and installation of a gate at the property, there is conflicting evidence from Ms. Reid and her witnesses as to when these took place. Ms. Reid testified that she began the construction of the wall in or about 1999 and completed it in 2000. In contrast, Mr. Duncan's evidence was that there was no concrete wall around the property when he became a tenant there in 2008 and that he observed the wall being constructed shortly after he moved onto the property.
- [72] Mr. Crooks also gave conflicting evidence in this regard. He stated that he had seen the walls being constructed ten (10) years after he moved to the area. It is not clear when this was as he variously stated that he had lived there since 1990 and that he had been living at 14 Elgin Road since 1999. As the evidence from Ms. Reid and her witnesses is contradictory, I also find that it is unreliable in determining who constructed the wall and when it was constructed.

- [73] The same could be said for the gate. Mr. Duncan could not recall if a gate was already in place when he moved to the disputed property but asserted that it was after he moved to the property that a small wooden gate was installed. In addition, he was uncertain about the type of gate, initially stating that it was a small “board gate” and not an “iron gate”, but when he returned to court the following day, he stated that he could not recall if the gate was board or iron.
- [74] It is also worth noting that Ms. Foster gave evidence that her brother constructed the wall in question. Further, as it regards the installation of the gate, she also testified that her aunt is the person who is responsible for the installation of the left side of gate, but her brother carried out the work. From the exhibits it is clear that the gate in question is a metal gate and has two sides and the question then becomes, who installed the right side of the gate. On the basis of the evidence before me, I am inclined to find that Ms. Reid is likely responsible for the installation of the right side of the gate.
- [75] The authority of **Archer v Georgiana Holdings Ltd** (1974) 21 WIR 431 is relevant as to the legal principles which govern whether fencing is sufficient as evidence of possession. In that case, the court found that fencing the land of another may be an equivocal act. The question will become what is the purpose for which the fence was installed. In that case, Swaby J.A. stated that there was no evidence that the Defendant had ever attempted to access the property or been denied access to same. As such, it was found that the installation of the fence was equivocal as it may have been done to protect the property from members of the public trespassing and not to prevent the true owner’s entry.
- [76] On my analysis, there is no reliable evidence before the court as to when the wall was constructed or who constructed it. In any event, there is also no evidence that Ms. Foster was denied access to the property due to the wall and/or fencing around the property. In applying the principles stated in **Archer v Georgiana Holdings Ltd** (supra) I find that the construction of the wall and installation of the right side

of the gate constitute equivocal acts. I also do not believe that the wall was completed in 2000 as stated by Ms. Reid.

[77] On the question of the consideration to be given to the improvements made to buildings on the property as well as the repairs undertaken, I note that Ms. Reid has provided the court with no documentary or other evidence to prove that she expended in excess of \$1,300,000.00 from her own resources on these improvements and repairs. It is incredible that she could have expended so much and not have even one bill or invoice or even the testimony of one workman in proof thereof. She has also not provided any proof of the source of these funds.

[78] In addition, none of the evidence given by the Claimant or her witnesses is sufficient to prove when said repairs and improvements began or were done. Mr. Duncan can only speak to the works he observed after he moved to the property in 2008. Where Mr. Crooks is concerned, his statements in relation to the improvements and repairs on the property are admittedly hearsay statements.

[79] In respect to the collection of rent from tenants that Ms. Reid put in place on the property, there were no details of the number of tenants, who they were and save for Mr. Duncan, the amount of rent collected from them. I find that she also gave conflicting evidence in regard to when she started to rent the disputed property. She provided differing dates as to when her first tenant was put in place claiming in her witness statement that it was no later than 1997 but stating in her testimony that she rented to her first tenant in 1999.

[80] Mr. Duncan's evidence is also not conclusive on this issue as while he stated that when he moved to the property in 2008 there were other tenants already living there, he made no mention of who the landlord was for those tenants. He did however state that he has been paying rent monthly to Ms. Reid.

[81] According to the Witness Statement of Dellie May Foster, up to August 31, 2022, she still had two (2) tenants living on the property, Ms. Lorna Cannon and Ms. Nicky Davis. Nonetheless, her evidence was that she has not collected any rent

from anyone on the property since 2008 and she later gave evidence that she does not know who the current tenants are on the property.

- [82] Based on this evidence from the parties, I find that Ms. Reid has rented sections of the property to different tenants and that her tenants currently reside on the property. Consequently, I am satisfied that she has had factual possession of the entire property, if not sections of same. However, I do not find that there is any evidence to prove when said factual possession started or that it started in 1996. Even if I were to accept that the first tenant was placed on the property by Ms. Reid in 1999, according to **JA Pye (Oxford) Ltd and another v Graham and another** (supra), to prove adverse possession, both elements must be satisfied. Ms. Reid is required to demonstrate that she has had both factual possession as well as an intention to possess the property for over twelve (12) years.
- [83] Slade J in **Powell v McFarlane** (supra) pronounced that factual possession requires a single and exclusive possession. Therefore, the true owner of the property and a person intruding on that land without his consent cannot both be in possession of the land at the same time.
- [84] Ms. Foster has challenged Ms. Reid's claim to exclusive possession. Her evidence is that the last time that she collected rent was in 2008. In addition, she stated that she had Ms. Velma Allen as an agent on the property who managed it until in or about 2008. As Ms. Allen was not called to give evidence to corroborate that of Ms. Foster, I find that all statements in relation to the alleged agent are without substance.
- [85] Notwithstanding, the burden remains on the shoulders of Ms. Reid to prove that she has acquired a possessory title for the property. **Powell v McFarlane** (supra) dictates that intention to possess signifies an intention to exclude the world at large including the true owner of the property. I do not find that any of Ms. Reid's actions are sufficient to constitute an intention to exclude the world at large for at least

twelve (12) years. Against that background, I do not find that Ms. Reid has satisfied the requisite elements to establish adverse possession.

Whether the Orpha Reid has obtained an equitable interest in the property by virtue of proprietary estoppel

[86] In **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ 6, Morrison JA, as he then was, aptly stated the principles with respect to the doctrine of proprietary estoppel at paragraph 73. The Learned Judge opined:

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

[87] In **Caren Cranston v Tamazine Samuels and Gairy Toorie** [2019] JMCA Civ 42 Edwards JA at paragraph 60 also examined and outlined the principles as it relates to the doctrine of proprietary estoppel by stating:

“The doctrine of proprietary estoppel was developed in equity as a species of equitable estoppel and is a remedy against the unconscionable or inequitable conduct of one party in dealing with another. The remedy is available where it is established that “one party knowingly encourages another to act, or acquiesces in the other’s actions to his detriment and in infringement of the first party’s rights” (see Hanbury & Martin Modern Equity, 17th edition, at page 897, paragraph 27-022). That party cannot later complain of the infringement of his proprietary rights, and may be forced to give up that right which he encouraged the other party to expect. It is a cause of action in equity brought by a claimant to validate his expectation that he would gain a benefit or right in the defendant’s property, brought on by the conduct of the defendant in encouraging, promising or acquiescing in the claimant’s acting to his detriment based on that expectation. Estoppel then creates a new right and interest in the claimant. The burden of proof falls on the defendant to show that the claimant’s conduct was not induced by his assurances. The extent of the equity is to make good the claimant’s expectations.”

[88] At paragraph 63 of **Cranston** (supra), the Learned Judge further stated:

“The defendant, his agent or his predecessor in title, therefore, must have encouraged the claimant to expend money or do other acts directly or indirectly by abstaining from asserting his legal rights. The claimant then has to show that the defendant, by now asserting his legal right, is acting in an unconscionable, unequitable and unjust manner. If this occurs, the question is what remedy would be available to the appellant.”

[89] In the instant matter, Counsel for Ms. Foster submitted that no representation or assurance had been made to Ms. Reid; therefore, proprietary estoppel is irrelevant in the circumstances. However, Counsel for Ms. Reid asserted that there was acquiescence on the part of the Estate of Lucina Melvina McIntosh and/or Ms. Foster as Ms. Reid had been exercising acts of possession and ownership over the disputed property from 1993 to 2011. Counsel Dr. Barnett stated that during this time, neither Ms. Lucina McIntosh nor any representative of her Estate sought to claim ownership over the land. Thus, the inaction or silence of Ms. McIntosh and her Estate constitutes an acquiescence which was relied on and resulted in a detriment to Ms. Reid.

[90] Upon an examination of the facts of this matter, I find that there was no representation or encouragement made to Ms. Reid regarding the disputed property by Ms. McIntosh or any representative of her Estate. Nevertheless, I will proceed to consider whether there was acquiescence to the actions of Ms. Reid which would have given her an expectation of some interest in the land as well as whether she acted to her detriment based on said acquiescence.

[91] As I have already found, the evidence provided by Ms. Reid as to her actions and when these began is unreliable and incredible. The court has been provided with no credible evidence as to when Ms. Reid began any construction, improvements and/or repairs on the disputed property. Additionally, there is no evidence in support of the claims that Ms. Reid used her own resources to finance any

construction, improvements and/or repairs on the said property. Further, as Ms. Reid was found to be a witness lacking in credibility and Mr. Crooks had naught to offer except hearsay statements, the court was left with examining the evidence given by Mr. Duncan and Ms. Foster to determine when any construction, improvements and/or repairs began on the property as well as by whom.

[92] As Mr. Duncan is unable to credibly speak to any improvements, repairs and/or construction which took place on the property prior to 2008 when he became a tenant, and I accept that Ms. Foster stopped managing the property in 2008, I find that proprietary estoppel has not been made out on the facts of this matter. There is no evidence before the court to prove that Ms. McIntosh or any of the representatives of the Estate of Ms. McIntosh acquiesced to the actions of Ms. Reid as it relates to her treatment of the disputed property. For these reasons, I find that Ms. Reid has failed to establish that she has obtained an equitable interest in the disputed property by way of proprietary estoppel.

CONCLUSION

[93] In relation to Claim No. 2017 HCV 03394: -

- a) Judgment for the Defendant.
- b) Costs to the Defendant to be taxed if not agreed.

In relation to Claim No. 2018 HCV 02546: -

- a) Judgment for the Claimants.
- b) Costs to the 2nd Claimant to be taxed if not agreed.