[2020] JMSC 160

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2010 HCV 01998

BETWEEN	**GEORGE ROBERTSON**	**CLAIMANT**
AND	**SONIA DOWE**	**1ST DEFENDANT**
AND	**ADMINISTRATOR GENERAL**	**2ND DEFENDANT**

IN CHAMBERS

Mr. John Graham, Mr. Leroy Equiano and Mrs. Rosemarie Duncan-Ellis instructed by Duncan-Ellis & Company for the claimant

Mrs. Caroline Hay Q.C., Ms. Kimberley P. McDowell and Mr. Neco G. Pagon instructed by Caroline P. Hay & Company for the defendant

Miss Saverna Chambers and Ms. Geraldine Bradford for the Administrator General

1, 2,3 and 4 December 2015, 24, 25 and 26 February 2016, 3 and 4 April, 1, 3, 4 and 5 May, 5 and 6 June 2017, 15, 16 and 17 January and 18 October 2018, 19 and 30 September 2019 and 24 July 2020

Land law – Recovery of possession – Oral agreement for sale – Whether the deceased paid the purchase price – Statute of Frauds, section 4

Land Law – Whether deceased acquired possessory title – Registration of Titles Act, section 68 – Limitation of Actions Act, sections 3 and 30

Equity - Proprietary estoppel

Contract for sale of land – Part performance

SIMMONS J

The Claim

[1] This is a claim for recovery of possession of premises situated at 41 Orchard Avenue, Kingston 20 in the parish of Saint Andrew, premises which is registered at Volume 1049 Folio 49 of the Register Book of Titles (the premises).

[2] The claimant who is the registered proprietor of the premises was the manager for Mr. Brent Dowe, a recording artiste who is now deceased (the deceased). The first defendant is the widow of the deceased. The second defendant was added as a defendant by order of L. Campbell J on 7 July 2010.

[3] The particulars of claim state that the claimant and the deceased entered into a management contract on 23 October 1978. It was averred that in 1980, the premises became vacant, and the claimant offered free accommodation to the deceased to make him comfortable. The deceased moved into the premises in 1982.

[4] In 1986 the deceased invited the first defendant to come and live with him at the premises. They subsequently married. The deceased began to express an interest in purchasing the premises and in 2004, indicated to the claimant that he wished to make periodic payments towards its purchase. The claimant and the deceased agreed that the funds would be deposited into an account at the National Commercial Bank (Jamaica) Limited which was opened for that purpose in November 2004. No money was deposited into the account by the deceased up to his death in 2006.

[5] The pleadings state that the claimant and the deceased never entered into a contract for the sale of the premises. It also stated that the claimant sent funds to the deceased for the payment of property taxes.

[6] In 2007, the claimant approached the first defendant about her intentions concerning the premises and she indicated that she was interested in purchasing same. In 2008, the claimant asked his then attorneys-at-law, Nicholson Phillips to prepare a contract for the sale of the premises to her. However, the first defendant did not attend on the claimant's attorneys-at-law, as she did not have the required deposit.

[7] In 2009, after a valuation was done for the premises, the claimant again approached the first defendant regarding its sale. That approach did not bear fruit, and on 27 October 2009, the claimant gave the first defendant notice to quit the premises.

[8] She has refused to vacate same.

The defence

[9] On 21 October 2010, the first defendant filed and served a defence and counterclaim which were amended and filed on 18 November 2014.

[10] In her defence, the first defendant asserted that either herself or the estate of the deceased would be the beneficial owner of the premises. She stated that the deceased and the claimant had entered into a contract for the sale of the premises, and the deceased had paid the full purchase price of United States twenty-one thousand dollars (US$21,000.00). It was asserted that the payment was effected by way of two instalments made by the endorsement of two of the deceased's royalty cheques in favour of the claimant.

[11] The first defendant stated that she and the deceased moved into the premises in August 1980, by which time the purchase price had been paid. It was averred that the claimant assured the deceased that he would effect the transfer of the premises. She stated that the deceased trusted the claimant as they were friends. It was said that the deceased reminded the claimant on several occasions that the transfer had not been done.

[12] The first defendant also stated that since August 1980, she has up to the present and the deceased, until his death, enjoyed exclusive and undisturbed possession of the premises. She indicated that all four of their children were raised there and the deceased had done various improvements to the premises. The claimant had neither objected to nor approved those works.

[13] It was also averred that the deceased visited the claimant in New York and asked him to confirm the sale in writing the document was witnessed by Mr. James McNaughton (also referred to as Trevor McNaughton).

[14] The deceased fell ill suddenly and on his death bed accused the claimant of robbing him and declared that he could not take his house.

[15] The first defendant asserted that she is the beneficial owner of the premises on the following grounds:

(1) She is the widow of the deceased who was the beneficial owner of the premises;

(2) Alternatively, she has enjoyed exclusive and undisturbed possession of the premises from August 1980 to 2010 when the claim was filed and has acquired possessory title;

(3) Alternatively, on the claimant's case, the deceased and the first defendant took possession of the premises as and were at all times, tenants at will. Consequently:

(a) By virtue of section 9 of the **Limitation of Actions Act** after August 1980 any right the claimant may have had to possession accrued at the expiration of one year;

(b) By virtue of section 3 of the **Limitation of Actions Act** any right the claimant had to bring an action for possession was statute-barred;

(c) Any such right the claimant may have had was extinguished by virtue of section 30 of the **Limitation of Actions Act** and the first defendant has acquired possessory title to the premises.

[16] It was also stated that the deceased and the first defendant had paid the property taxes at their sole expense since they took possession, up to 2007.

[17] The first defendant indicated that in 2007, the claimant approached her with a view to transfer the premises and demanded that she pay United States twenty-three thousand five hundred dollars (US$23,500.00) to complete the process. She refused to pay that sum as the premises had already been paid for and she was of the view that the expenses associated with its transfer could not amount to such a large sum.

[18] She stated that she had visited the claimant's attorneys-at-law after she had received a letter in which she was described as a tenant. The purpose of her visit was to explain her position.

The counterclaim

[19] In her counterclaim, the first defendant is seeking the following declarations:

(1) That the estate of the deceased is entitled to an order for specific performance of the agreement for sale of the premises;

(2) Alternatively, that the first defendant is entitled to possession and ownership of the premises;

(3) Alternatively, that the first defendant is entitled to one half of the premises.

[20] The court was also asked to determine "the nature and extent of the equity or interest of the first defendant in the premises and/or the nature and extent of the equity or interest of the estate of the deceased in the premises and determine the appropriate remedy to give effect to such equity or interest". An order for the

cancellation of the Certificate of Title for the premises and the issue of a new one with the first defendant endorsed as the registered proprietor is also being sought.

[21] The claim for specific performance was withdrawn during the trial.

Amended Reply to Defence and Counterclaim

[22] It was denied that the first defendant and the deceased were beneficial owners of the premises.

[23] The claimant stated that the management contract between him and the deceased was renewed and he remained as his manager until 1999. He subsequently became the deceased's "freelance manager" and remained so until his death.

[24] It was stated that although the deceased expressed an interest in purchasing the premises on many occasions, they never entered into an agreement for sale. He indicated that he had offered to sell the premises to the deceased for United States thirty-five thousand dollars (US$35,000.00). The purchase price was to be paid in two instalments of which United States twenty-one thousand dollars (US$21,000.00) was to be paid in Jamaica and United States fourteen thousand dollars (US$14,000.00) in the United States. No payments were made by the deceased or anyone on his behalf. The claimant indicated that the first time that the deceased expressed such an interest was after he moved into the premises.

[25] The claimant stated that the deceased moved into the premises alone. It was averred that he and the first defendant entered into and remained in occupation of the premises with the claimant's knowledge, permission and consent and never asserted that they were its owners. It was stated that after the death of the deceased the first defendant expressed an interest in purchasing same.

[26] The claimant indicated that he visited the premises three to five times per year, walked through the house and grounds to see if they were being kept in good repair and the deceased and the first defendant always sought his permission to effect

improvements. It was stated that the claimant's son stayed there when he visited Jamaica.

[27] The claimant denied that in 1984, there was a meeting in New York to discuss the transfer of the premises to the deceased. It was averred that the meeting in 1984, was to agree to the terms of purchase and the deceased was to indicate how the purchase price would be paid. No document was however signed confirming the sale of the premises to the deceased.

[28] In 2006, another meeting was held at the request of the deceased to discuss whether he intended to purchase the premises. At no time did the deceased assert that the premises belonged to him.

[29] The claimant admitted that while the deceased was in occupation, he never slept at the premises. He, however, stated that he was always given liberal access to the premises whenever he visited. It was stated that whenever electrical issues arose, the claimant would arrange for an electrician to visit the premises at his expense. It was also stated that the replacement of the kitchen cupboards was done with his permission. He denied that the roof was replaced. It was also stated that when the deceased and the first defendant moved in, there was a complete concrete perimeter wall in existence. The claimant indicated that the deceased did not add a bedroom. It was his evidence that it was he who added the bedroom as a helper's quarters when he bought the premises in 1972. He also stated that it was he who had converted the washroom at the back of the house into a small room that was occupied by the caretaker Eric Ranglin whilst the claimant resided there. It was stated that the deceased had replaced the tiles in a small section of the house. The claimant indicated that he never relinquished his interest in the premises.

[30] It was admitted that he had approached the first defendant after the deceased's death to discuss the possibility of her and her children acquiring the premises.

The defence of the second defendant

[31] The second defendant relied on the contents of the first defendant's defence. An attempt was made to amend the defence to add a counterclaim for a declaration that the estate of the deceased was entitled to an order for specific performance and was entitled to possession and ownership of the premises. The application was refused by Pusey J on 30 April 2015. Permission to appeal was refused on 15 June 2015.

The claimant's evidence

[32] Mr. Robertson's evidence in chief is contained in three witness statements which were sworn on 11 March 2011, 22 March 2014 and 4 July 2016.

[33] In his first witness statement he stated that he is the registered owner of the premises. His evidence is that from 23 October 1978 to 1999, he was the exclusive manager of the deceased who was a singer and songwriter with the Melodians. After 1999 and up until 2006, he was the deceased's "freelance manager".

[34] He stated that as the deceased's manager he wanted him to be comfortable and as a consequence when the premises became vacant in 1980, he offered him free accommodation. The deceased moved into the premises in 1982. In 1986, the deceased invited the first defendant to join him at the premises. Mr. Robertson's evidence is that they entered into occupation with his permission and at no time alleged that they were its owners.

[35] The claimant stated that after a few years he offered to sell the premises to the deceased for United States thirty-five thousand dollars (US$35,000.00). That sum was to be paid in two instalments; United States twenty-one thousand dollars (US$21,000.00) was to be paid in Jamaica and United States fourteen thousand dollars (US$14,000.00) in the United States.

[36] An account was opened at the National Commercial Bank to facilitate the deposit of funds towards the purchase price until enough was accumulated for a deposit. His evidence is that no payments were made.

[37] He indicated that in 2006 he met with the deceased to discuss whether he still intended to purchase the premises. After the meeting, they parted on good terms. The deceased died the next day.

[38] The claimant stated that the deceased and the first defendant did not enjoy undisturbed possession of the premises as he would visit three to five times per year and walk through the house and the grounds. He also gave evidence that he retained a set of keys which were subsequently misplaced. It was his evidence that he arranged for electrical work to be done at the premises at his expense. The claimant indicated that at the time when the deceased and the first claimant were replacing the kitchen cupboards, they sought his permission and he met with the carpenter before the work began and after its completion. Where the perimeter wall is concerned, he stated that it was built when he purchased the premises in 1972. He also stated that the deceased and the first defendant did not add a bedroom to the house, as that bedroom was added by him as a helper's quarters in 1972.

[39] Mr. Robertson also indicated that each year he sent money to the deceased for the payment of the property taxes. Three property tax receipts were submitted in support of that assertion. They are dated 24 October 2007, 22 August 2008 and 1 April 2010. He denied that the roof was replaced and stated that the deceased and the first defendant did not add a bedroom to the house or undertake any construction at all.

[40] Mr. Robertson maintained that it was he who converted the washroom at the back of the house into a small room for a caretaker who resided at the premises whilst it was occupied by him and his family. He also gave evidence that after the death of the deceased, he inquired of the first defendant what were her intentions

concerning the premises and she indicated that she was interested in purchasing same. His evidence is that he agreed to wait until the deceased's estate was settled, and in 2008 gave his attorneys-at-law instructions pertaining to the sale of the premises to the first defendant. The first defendant he said, informed him that she did not attend at the lawyer's office, as she did not have the Jamaican five hundred thousand dollars (J$500,000.00) which was required as a deposit. His evidence is that in 2009, another attempt was made to facilitate the sale of the premises to her, but it bore no fruit. Mr. Robertson stated that on 27 October 2009, a notice to quit was served on the first defendant but she has refused to vacate the premises.

[41] The claimant indicated that he did not represent to the deceased or first defendant that he had no interest in the premises and on the contrary, he made frequent visits there. He also stated that no contract for sale was entered into between him and the deceased and/or the first defendant for the sale of the premises and no payment was made by them towards its purchase.

[42] In his second witness statement he stated that after he bought the premises he added a verandah and extended the building to the front. He also enclosed a garage area and added a room and a washroom in preparation for the addition to the family as his wife was pregnant. Mr. Robertson stated that after he removed from the premises, his brother resided there and it was during that period that the carport was tiled. He again stated that the deceased had been living in Greenwich Town and his financial position was "desperate and living conditions deplorable." He indicated that he was aware of the relationship between the deceased and the first defendant and had no objection to her living at the premises, and after their marriage they continued living there.

[43] He stated that on several occasions up to his death, the deceased acknowledged that he (Mr. Robertson) was the owner of the premises and that he had not purchased it and had been allowed to live there while the claimant was his manager and producer. He stated that his discussions with the deceased with

respect to his continued residence at the premises were conducted mainly in the absence of the first defendant, although the deceased had said in her presence that the premises was not his and he expressed gratitude to the claimant for allowing him and his family to reside there.

[44] It was his evidence that the deceased did not wish to reside in Kingston after his retirement and his investment was in a property situated at Jericho in the parish of St. Catherine, where he built a substantial structure for his residence. He stated that his relationship with the deceased's family prior to the breakdown, was good and his son regularly stayed at the premises while in Jamaica. He also stated that he completed the electrical wiring, installed ceiling fans and repaired the damaged roof. Mr. Robertson indicated that he gave the claimant permission to use the newly constructed room at the side of the house to operate as a music shop.

[45] He also stated that the first defendant acknowledged his ownership of the premises both before and after the death of the deceased and sought financial assistance with his funeral expenses. His evidence is that from 2006 to early 2007 the first defendant facilitated the viewing of the premises by prospective purchasers and subsequently informed him that she was interested in purchasing same. He took the premises off the market to facilitate that process and allowed the first defendant to remain in occupation. The agreed purchase price was Jamaican four million five hundred thousand dollars (J$4,500,000.00) and the first defendant informed him that she had approached her daughter to secure financing through the National Housing Trust (NHT) but she was unwilling to do so.

[46] In his third witness statement the claimant repeated what was said in the first two witness statements.

[47] In cross examination, Mr. Robertson indicated that he was not familiar with the term "tenant at will" and indicated that the first defendant was never a tenant. He also said that she did not have permission to occupy the premises and maintained that the deceased had not purchased same. He stated that the deceased moved

in between 1980 – 81, and when he was referred to paragraph 3 of his affidavit dated 26 June 2010, which stated that the deceased and his wife occupied the premises from 1976, he indicated that that was an error. He stated that the first defendant moved in about 1981 and that he mistakenly stated that it was 1986. His explanation was that at the time, he was not at the premises. However, he maintained that they did not move in together. When he was referred to his amended reply he stated that his lawyer had made a mistake in the defence and counterclaim where at paragraph 8 it is stated that the "*1st defendant and Brent Dowe entered into occupation and thereafter remained in occupation of the premises with the consent of the claimant*." The witness indicated that when he came from the United States, the deceased asked permission for the first defendant to stay at the house and that was about six months after the deceased had moved in. When he was directed to paragraph 13 of his witness statement which stated that both of them had entered into occupation at the same time, he stated that it was not true.

[48] The claimant indicated that he kept [record] jackets and other belongings at the premises and had a key to the storeroom and the room on the verandah. When pressed by counsel, he admitted that this was the first time he was saying that he kept personal property at the house. He also said that he had record jackets and stampers. He indicated that the room was cleared out when recordings began to be done on compact discs.

[49] Mr. Robertson stated that the deceased met with him in Miami, United States of America in 1984. He also indicated that he knew Trevor McNaughton who was a member of the Melodians. His evidence is that he did not recall anyone else being at the meeting. He also said that he and the deceased had a verbal agreement for the sale of the premises for thirty-five thousand United States dollars (US$35,000.00). It was his evidence that there is no document evidencing the sale and he never indicated to the deceased that he would transfer the premises to him. The claimant stated that the first serious conversation between him and the

deceased about the sale of the premises took place in 2004 when he asked the deceased to deposit some money.

[50] The claimant indicated that the only improvements done by the deceased was in respect of the kitchen and some tiling. He described the repairs to the kitchen as substantial.

[51] He did not recall the first defendant saying in evidence that they had a conversation in 2003 during which it was indicated that the document evidencing sale had been lost. He also said that he could not recall having any meeting before the serious meeting in Miami in 1984. He also could not recall when he and the deceased first met to discuss the sale of the house. He did not recall there being a single page document confirming the sale of the premises to the deceased.

[52] He gave evidence that he did not want to sell the premises, he was however, directed to paragraphs 17 and 22 of his first witness statement where it was indicated that he had offered to sell the house to the deceased, and secondly, that in 2006, he had requested a meeting with him to discuss whether the deceased was still interested in purchasing the premises.

[53] He maintained that he had paid property taxes for the period 1980 to 2006. He did not recall saying that he had a key in 2014 and indicated that he never slept at the premises after 1998 and did not keep any personal belongings there.

[54] He again stated that the reason for permitting the deceased to live at the premises was his desire for him to be comfortable. He said that he was helping the deceased and himself, as the deceased was writing songs and he was the publisher. He stated that he gave the deceased room and board in exchange for his writing skills.

[55] The claimant stated that the song “Rivers of Babylon” was a huge hit for the Melodians. It was written in 1970, and was used on the soundtrack for the movie ‘The harder they come’. In 1978, the group Boney M covered the song and it became a huge hit in Europe. It was his evidence that the Melodians received 25%

of the royalties and that the deceased, as the writer, got 60% of that 25%. He indicated that it was in 1978, that the deceased began to earn from his craft. The first lump sum payment was United States seventy thousand dollars (US$70,000.00) and royalties of between United States seven thousand dollars (US$7,000.00) and United States eight thousand dollars (US$8,000.00) would be paid to the deceased every six months. The first payment was done through lawyers and they and the auditors were paid out of that sum. He and the deceased signed a management agreement in England. That document has a red stamp.

[56] When asked if the deceased had the capacity to purchase a house in 1980, he said that he did not know because the deceased had expensive habits. He maintained that the deceased did not pay him for the premises. When challenged in respect of his evidence that he paid the property taxes, he stated that he used to send the money through Western Union to the deceased and would also give him cash.

[57] He maintained that he and the Dowes were like a family until after the death of the deceased. His evidence is that he lost the key for the store room in 1999.

[58] His evidence is that he reimbursed the deceased for sums spent on the fence at the rear of the premises. The deceased he said, funded the work for the side fence. He agreed that the boundary wall that had the decorative blocks was fixed by the deceased. He denied that the deceased and the first defendant added a bedroom. He indicated that he and the deceased fixed the zinc roof that was damaged during hurricane Gilbert.

[59] He indicated that he did not know whether the deceased and the first defendant had replaced the gypsum in the ceiling. He did not see the grilled doorway from the carport to the den or the window in the washroom and surmised that those things may have been done after he stopped going to the premises. He also indicated that the deceased and the first defendant had to get his permission regarding the improvements to the kitchen.

[60] Where the evidence of Ms. Donnette Dowe[1] is concerned, Mr Robertson stated that he did not tell her that the deceased had paid for the house. He agreed however, that he told her that she should leave Trench Town. He also denied that he offered her Jamaican two hundred thousand dollars (J$200,000.00). He indicated that she asked him about the money that the Administrator General had because she wanted her portion. He stated that she, her sister Wendy and brother retained the services of a lawyer to deal with that issue. He denied telling Ms. Donnette Dowe that he wanted the first defendant to pay four million Jamaican dollars (J$4,000,000.00) for the title to the premises.

[61] He maintained that after their discussion in 2006, he and the deceased parted on good terms. He indicated that the deceased said he would see him in the morning and asked him to call Island Records to request an advance of funds.

[62] He said that the meeting in 1984, in Miami was in respect of money that had been forfeited in Washington DC. When it was put to him that he had previously stated that it was in respect of the purchase price for the premises he said that "it came up". He denied asking Ms. Donnette Dowe and Ms. Alexis Dowe to write a letter supporting his contention that he had not been paid for the house. He also did not recall Ms. Donnette Dowe saying that he did so.

[63] When cross examined by Miss Chambers he said that the deceased and the first defendant lived at the premises from 1980 to 2006, and that he had allowed them to live there rent free. He stated that he had "signed" the deceased because of the popularity of the song 'Rivers of Babylon'. In other words, he recognised the deceased's earning potential. From 1978, he was the deceased's exclusive manager and dealt with his publishing. His evidence is that he did not handle the

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[1] The daughter of the deceased and the first defendant

deceased's money directly. He also indicated that when he spent money on the deceased's behalf it was not reimbursed as the deceased had no money.

[64] He stated that within a few years of living at the premises, the deceased expressed an interest in its purchase. He indicated that that could have been about 1979 or 1980 or the late 1980s. In 1984, he agreed to sell and told the deceased that he wanted to be paid in both United States and Jamaican dollars. The price may have been United States thirty-five thousand dollars (US$35,000.00). He stated that they did not have frequent discussions about the purchase until after 2004. He indicated that he never gave the deceased notice to quit because they were friends.

[65] The claimant stated that his aunt was in charge of another premises, a shop on Slipe Road which had been rented by the deceased and the rent was used for its maintenance. It was stated that the deceased was given notice to quit those premises for arrears of rent and that he (the claimant) was not in Jamaica at the time.

[66] He stated that he painted the premises in 1999 and maintained a presence there as he wanted everything to be up to date.

First defendant's evidence

[67] The following witnesses gave evidence on behalf of the first defendant:

(1) Mrs. Sonia Dowe

(2) Ms. Zattania Dowe

(3) Mr. Cedric Scarlett

(4) Ms. Cynthia Todd

(5) Ms. Donnette Dowe

Sonia Dowe

[68] Mrs. Sonia Dowe stated that she has lived at the premises since August 1980, when she and the deceased moved in together. Her evidence is that the claimant is not the beneficial owner of the premises. She asserted that she and the deceased are the beneficial owners or alternatively, his Estate is the beneficial owner.

[69] Her evidence is that the claimant was the deceased's manager for two (2) years commencing 23 October 1978. He also rented a shop from the claimant and paid Jamaican two hundred and fifty dollars (J$250.00) per month to the claimant's mother.

[70] The relationship between the claimant and the deceased fell apart and he was given notice to quit in respect of the shop on 22 April 1987. The reasons stated were that the rent was in arrears for 36 months (J$9,000.00) and the shop was required for the claimant's use. The deceased vacated the shop and the claimant did not seek to recover the alleged arrears.

[71] She stated that the deceased and the claimant entered into an agreement for the purchase of the premises. The purchase price was United States twenty-one thousand dollars (US$21,000.00) which was to be paid in two instalments (US$10,000.00 and US$11,000.00). She, however, indicated that she did not see the cheques that were paid to the claimant. Her evidence is that the purchase price was paid in full within one year of them moving in. The claimant she said, reassured her and the deceased that he would transfer the title in the deceased's name. She asserted that the deceased trusted him completely and did not insist on the transfer being completed immediately. The claimant's family and hers were close and the claimant's son would spend summer holidays with them.

[72] Her evidence is that she is aware that the deceased earned considerable sums in royalty payments.

[73] She indicated that she made several requests of the claimant for the transfer of the title and he assured her that it would be done. She stated that whenever he was in Jamaica she would call and remind him. The deceased she said, also reminded him on many occasions that the transfer was outstanding.

[74] In 1984, the deceased went to New York to ask the claimant for written documentation regarding the sale of the home and when he returned he showed her a one-page document confirming the sale of the premises to the deceased. The document had a red stamp and was witnessed by Mr. Trevor McNaughton. On the day the deceased died, Mr. McNaughton stated in the presence and hearing of the claimant that he had witnessed the said document. Since 2003, she and the deceased had been unable to locate the document.

[75] Since the filing of this action, she has been trying to locate Mr. McNaughton but has been unable to do so.

[76] She indicated that since she and the deceased took possession of the premises, the claimant has never slept there and his permission was not sought when they wanted to do improvements. She stated that they built a concrete wall at the back of the premises and increased the height of the boundary wall. The first defendant estimated that she and the deceased spent in excess of Jamaican four million dollars (J$4,000,000.00) in respect of the various improvements.

[77] Her evidence was that she and the deceased have been paying the property tax until 2007. She stated that in 2009 she discovered that someone had paid the taxes for 2007 to 2009. She paid the taxes for 2010 to 2011 and 2011 to 2013.

[78] The first defendant indicated that on 28 January 2006, the claimant, his wife and daughter visited the premises. The deceased who was out was called and came home. The claimant demanded twenty-one thousand five hundred United States dollars (US$21,500.00) as the purchase price for the premises. A quarrel ensued as the deceased maintained that the premises was owned by him. The deceased

told him that the reason why he was saying that no money was paid was because he had told him that the paper was lost. The deceased fell ill and died the next day. On his death bed, in the presence of the first defendant and Ms. Zattania Dowe (the daughter of the deceased and first defendant), the deceased said, “Tony can’t tek mi house. Sonia, Tony a rob mi, Tony a rob mi, Tony a rob mi.”

[79] She stated that when they moved into the premises they were purchasers in possession and since 1980, they have enjoyed continuous, exclusive and undisturbed possession of the premises. Their four children were born whilst they were living there. The eldest was born in 1982. She and the deceased married on 22 January 2000.

[80] In 1992, the deceased purchased property at Jericho in Saint Catherine for farming purposes.

[81] She indicated that subsequent to the death of the deceased, persons came to the premises indicating that it was for sale and she was shown a newspaper advertisement to that effect. She then called the claimant to make enquiries. She did not hear from him again in 2006, but she is aware that he continued to advertise the premises. In 2007, he approached her with people to view the premises and she allowed him to enter as she was unsure of her position as she had no papers for the premises.

[82] In 2008, the first defendant, the claimant and Ms. Zattania Dowe had a discussion about the premises and he said that he was looking for a way to transfer it to her. He demanded United States twenty-three thousand five hundred dollars (US$23,500.00) for taxes and costs. She indicated that she did not have the money, although she knew that the deceased had already paid for the premises.

[83] After receiving a letter from Duncan Ellis and Company, attorneys-at-law, in which the claimant indicated that he was willing to sell the premises to her, she visited their offices and explained her position.

[84] About three years after the death of the deceased Mr. Pat Kelly came to the premises and gave her a carbon copy of a document addressed to Mr. Marty Bloom which she gave to Ms. Zattania Dowe.

[85] She reiterated that she is beneficially entitled to the premises by virtue of the **Intestates' Estates and Property Charges Act** and/or the **Property (Rights of Spouses) Act**.

[86] In the alternative, she asserted that she has acquired possessory title by virtue of the **Limitations of Actions Act**. She maintained that she and the deceased were not tenants of the claimant.

[87] In her second witness statement, the first defendant stated that she met with Ms. Mecklar Myrie at the second defendant's office and submitted the birth certificates for the children as well as her marriage certificate and the "papers" for the Jericho property.

[88] She indicated that Ms. Myrie asked if she had papers for the premises and she told her that she did not. She understood from her conversation with Ms. Myrie that since the deceased's name was not on the title for the premises, it could not be included on the form of particulars for the Administrator General.

[89] In cross examination, she stated that when the deceased paid the property taxes he would give the receipts to her. Receipts for 1994 - 1995 (dated 25 January 1996), 1997- 2000 (dated 10 January 2000), 2000-2004 (dated 31 March 2003), 2004 – 2007 (dated 14 July 2006) and 2009-2010 (dated 18 November 2009) were admitted into evidence.

[90] She maintained that she and the deceased renovated the kitchen, increased the height of the boundary wall, replaced a fence with a concrete wall, added an arch to the gate and enclosed a part of the carport.

[91] She indicated that when she came to Kingston in 1978, she lived with the deceased at Oakdene Avenue in Vineyard Town. In 1979, they moved to Hyde Park Road. She agreed that the management contract between the claimant and the deceased was entered into in 1978. She indicated that they moved to the premises in August 1980, and she saw the claimant give the key to the deceased when they were moving in. She maintained that the deceased had purchased the premises from the claimant and had paid the purchase price in full. The last payment she said, was made while they resided at the Hyde Park home. She then said that she was not present when the payment was made. She also indicated that she was not present when the first payment was made. Her evidence was that all payments took place abroad.

[92] When asked what she meant by "beneficial owner", she said that it means that when someone dies you become the owner.

[93] Where the particulars for the Administrator General are concerned, she indicated that she did not include the names of the deceased's other children because she was not their mother. She did not include the premises because the title was not in the deceased's name. The deceased she said, had received the title for the Jericho property.

[94] Where the premises are concerned, she indicated that the deceased had shown her an original document with a red stamp.

[95] When she was shown a management agreement dated 2 August 1984, signed by the deceased and the claimant she insisted that their arrangement had ceased in 1980 and it had been unfair. She said that was not the document she had seen and had in her possession from 1984 to 2003, in respect of the premises. She then said that she and the deceased looked for the document and it could not be found. She said the document that was shown to her was comprised of one sheet of paper, unlike that which was being shown to her at the hearing.

[96] The first defendant indicated that she had never tried to contact Mr. Marty Bloom. She also stated that she tried to contact Mr. Trevor McNaughton to attend the trial. She indicated that she had previously called him but had lost his contact information.

[97] She reiterated that there was a conversation between her, the claimant and Ms. Zattania Dowe about paying for the premises. The claimant told her that it would cost United States twenty-three thousand five hundred dollars (US$23,500.00) to transfer the title. He suggested that she apply for a NHT mortgage. She said that the claimant had told her that the deceased had paid for the premises. She said that she would call the claimant and tell him when the deceased had money and he was to come and "finish up".

[98] She denied that the claimant assisted her with the deceased's funeral expenses. She also stated that he did not come to the house the day when the deceased died to express sympathy. She indicated that she could not recall whether they took a picture together at the funeral. Her explanation was that so many people had held her and took pictures. A photo was shown to her and she acknowledged that it was a photo of them at the funeral.

[99] She indicated that after hurricane Gilbert, the roof in the middle of the house leaked and the deceased and a neighbour applied flashband to stop the leaks. The zinc roof she said, was subsequently replaced. She stated that she had submitted the papers for the Jericho property to the Administrator General and the form of particulars for the Administrator General on separate occasions.

Zattania Dowe

[100] Ms. Zattania Dowe stated in her witness statement that she has lived at the premises all her life. She was born on 11 August 1984. The claimant is her godfather and she addresses him as "Uncle". She indicated that she and her mother, the first defendant, were present at her father's bedside when he died.

[101] Ms. Dowe indicated that to her knowledge the claimant had never slept at the premises, although his son used to stay there during some vacations.

[102] She stated that after hurricane Gilbert in 1988, the deceased and the first defendant replaced the pre-existing zinc fence with a concrete wall and increased the height of the front boundary wall. In the late 1990's, they refurbished the kitchen. She is not aware of any requirement for her parents to have obtained permission to effect those improvements, nor is she aware of the claimant's involvement in the decision making process.

[103] In 2005, she received a handwritten letter from her father and at his request typed same. The letter was addressed to Mr. Marty Blume of UMG Recordings Inc. Her evidence is that the purpose of the letter was to seek assistance to locate two cheques paid to the deceased from the Performing Rights Society.

[104] She indicated that she was a witness to the altercation between the deceased and the claimant, referred to by the first defendant in paragraphs 34 and 35 of her witness statement. Her evidence is that Mr. Trevor McNaughton confirmed that he had seen and witnessed a document evidencing the sale of the premises to the deceased. The deceased fell ill and died the next day.

[105] On his death bed, the deceased held her and exclaimed "Tony can't tek mi house". He then said to the first defendant "Sonia, Tony a rob mi, Tony a rob mi, Tony a rob mi."

[106] The witness stated that a discussion took place between the claimant, the first defendant and her about the transfer of the premises and he indicated that twenty-three thousand five hundred United States dollars (US$23,500.00) was needed for the estimated costs, duties and fees. She subsequently received a letter from Duncan Ellis and Company indicating that the claimant was willing to sell the premises to her. Thereafter, she visited their offices and explained the situation.

[107] In cross examination, she identified the carbon copy of the letter which was then admitted in evidence. She indicated that the carbon copy was brought to her by Mr. Pat Kelly and she reproduced the document on a computer. She does not know who created the carbon copy.

[108] She indicated that at the time of hurricane Gilbert she would have been four years old and her evidence regarding the expenditure at the premises at that time would have been based on what she was told.

[109] She indicated that after the death of the deceased there was a conversation about transferring the premises and the associated costs. The deceased died in January 2006 and they went to the Administrator General on 11 July 2006. They had seen a lawyer “near to January”.

[110] She also gave evidence that the issue of the first defendant applying for a NHT loan was raised. She reiterated that the claimant said that twenty-three thousand five hundred United States dollars (US$23,500.00) was needed and asked if they could get a loan.

[111] They discussed the issue of the premises with the lawyer who was handling the deceased’s royalty payments. Her evidence is that the lawyer said nothing and she did not ask her to refer them to someone who could deal with the issue. She stated that after receipt of the notice to quit, she met with Mrs. Duncan-Ellis and having spoken to her she formed the view that she needed to seek legal advice.

[112] She indicated that the claimant did not want the premises to be a part of the Estate. She also stated that the Administrator General had tried to contact him on the issue.

Cedric Scarlett

[113] Mr. Cedric Scarlett stated that in October 1996, he was approached by the deceased to build and install kitchen cupboards at the premises for which he was

paid Jamaican four thousand five hundred (J$4,500.00). He never met the claimant or received any instructions from him.

[114] The deceased also paid him to repair the rear and left side walls of the carport. He accompanied the deceased to Jackson's Hardware on Molynes Road where he witnessed the deceased purchase the materials for the construction.

[115] He said that Mr. George, a welder, installed grilling at the rear of the premises. It was indicated that he, Mr. George and a man known as "Kat' or "Rampuss' built a side gate and added an arch to the front gate.

[116] In 1999, on the instructions of the Dowes, he and "Rampuss" knocked down the wall between the two seating areas in the house to create a larger living area. He installed a rear wall on the right side of the premises and a grilled doorway creating access to the den from the carport.

[117] The witness also stated that parts of the zinc roof had been damaged and had to be repaired. He indicated that when he went to the premises a bedroom was already there and the carport was enclosed.

[118] His evidence is that at no time did he receive instructions from anyone but the Dowes.

[119] In cross examination, Mr. Scarlett indicated that when he went to the premises the wall was lower with fancy blocks on top which were broken. He knocked them off and raised the height of the wall.

[120] He did not know the deceased "to talk to" until he was engaged to do the repairs. The deceased showed him a paper in 1999, but he did not read it.

Cynthia Todd

[121] Ms. Todd indicated that she and the deceased and first defendant were neighbours and had been friends since 1984. She also stated that she had given them advice

on several renovations. The first renovation was in 1985, when a bathroom to the rear of the carport was fitted with “a makeshift bathtub” and the walls tiled. In 1987, renovations were done to a second bathroom. A cabinet and a new bathtub were installed and the walls retiled. The fixtures were also replaced.

[122] In 1988, after hurricane Gilbert she saw the deceased on the roof with a man installing sealant to prevent leaking. A similar job was undertaken in 1998. A zinc fence at the back of the premises was also replaced with a wall. She also spoke of the renovations to the kitchen and a room at the rear of the house.

[123] Her evidence is that she never saw the claimant giving instructions to the labourers who were engaged in those works.

[124] In cross examination, she stated that she did not know the claimant.

Donnette Dowe

[125] The deceased’s daughter Ms.Donnette Dowe, indicated that she went to live with him and the first defendant in 1980, when she was 11 years old. She had a good relationship with the first defendant.

[126] After the death of the deceased, Ms. Donnette Dowe, her half-sisters Kimberly Dowe and Zattania Dowe and the first defendant, got into a heated argument concerning whether the deceased was to be cremated or buried. They did not speak from 2006 to May 2014.

[127] She stated that shortly after the death of the deceased, the claimant called her from the United States. When he came to Jamaica he gave her Jamaican three thousand dollars (J$3,000.00), two bottles of cologne, a watch and a cap for her son. He told her that her father had paid for the premises in full but had said that he did not want the title because he did not want the first defendant to get possession of it. He also told her that he had told the first defendant that she needed to pay him four million Jamaican dollars (J$4,000,000.00) for the title but

because she refused he was going to take the house away from her and sell it. He indicated that he would give part of the proceeds to her and her sister Ms. Alexis Dowe if they lied and told the court that the deceased did not pay for the premises.

[128] Her evidence is that she told him that she would not speak on his behalf in court as it was not the truth.

[129] In cross examination, she stated that she met the claimant in 2011. She maintained that the claimant told her that the deceased had paid for the house. He also told her about the royalty payments. Her father did not, however, tell her if he paid for the premises.

[130] She stated that the claimant asked Ms. Alexis Dowe and her to write a letter stating that the deceased had not paid for the premises in exchange for Jamaican two hundred thousand dollars (J$200,000.00) each.

Second defendant's evidence

[131] The second defendant relied on the evidence of:

(1) Mrs. Lona Brown; and

(2) Ms. Mecklar Myrie.

Mrs. Lona Brown

[132] The witness statement of Mrs. Lona Brown, the Administrator General was admitted in evidence as an exhibit.

[133] In her witness statement Mrs. Brown stated that she was not in a position to confirm or deny the allegations put forward by the claimant. She indicated that she would be relying on the defence and counterclaim filed by the first defendant.

Ms. Mecklar Myrie

[134] Ms. Mecklar Myrie gave evidence that she is a Case Officer employed to the second defendant and had conduct of the deceased's estate.

[135] She stated that the death of the deceased was reported to that department by way of a "Particulars Required by the Administrator-General" form which was signed by the first defendant. That form was submitted by D. Pryce & Associates, Attorneys-at-Law. She indicated that no form was received from Ms. Donnette Dowe, Mr. Michael Dowe or Ms. Alexis Dowe, although other documents including birth certificates were received from their representatives.

[136] The first defendant she said, informed her about the land at Jericho in St. Catherine and provided the original agreement for sale and receipts. Ms. Donnette Dowe and the first defendant both provided information in respect of royalties.

[137] The witness also indicated that there is no supplemental form to the Particulars Required by the Administrator-General.

[138] She stated that based on a letter from Humphrey McPherson attorney-at-law, which raised the issue of the deceased owning the premises, she had asked the first defendant on 25 September 2007 about the said premises. The first defendant informed the witness that the claimant had indicated that the premises belonged to him and had offered to sell it to her. On 4 October 2017, Humphrey McPherson visited the department and informed the witness that the deceased had purchased the premises and there was a sale agreement and payment had been made.

[139] The witness could not recall, and there was no indication on the file, that the first defendant had informed her that she did not have any "papers" which could prove that the deceased owned the premises. She also stated that there was no indication on the file that she had advised the first defendant that in those circumstances, the premises could not form part of the Estate of the deceased and that she was to seek legal representation.

[140] In cross examination, she stated that when persons visit the office, file notes are made and she reviewed those notes before completing her witness statements. She indicated that if the first defendant had told her that she did not have papers for the premises, a file note would have been made. There was also no file note indicating that the premises could not be added to the Estate due to the absence of the relevant documents and that legal representation should be sought. She maintained that if she had any such conversation she would have made a record.

The issues

[141] The issues which arise are:

(1) Whether the first defendant is a beneficial owner of the premises by virtue of the **Intestates Estates and Property Charges Act**?

(2) Whether the claimant's title has been extinguished by the operation of the **Limitation of Actions Act**?

(3) Whether the doctrine of proprietary estoppel applies?

Whether the first defendant is a beneficial owner of the premises by virtue of the Intestates Estates and Property Charges Act

Claimant's submissions

[142] Mr. Graham submitted that the title of the claimant as the registered owner of the premises is indefeasible except in certain prescribed circumstances.

[143] Counsel, having referred to the failure of the first defendant to present any evidence of a written agreement for sale, argued that in light of section 4 of the **Statute of Frauds,** her defence that she and the first defendant purchased the property must fail. Reference was made to ***Nation Hardware Ltd. v Norduth Development Co. Ltd et al*** (unreported) Supreme Court, Jamaica, Claim No. 2005 HCV 02314, judgment delivered 3 October 2005, in which Sykes J (as he

then was) stated that in order for an oral contract for the sale of land to be enforceable, cogent evidence of its existence must be presented to the court.

[144] Mr. Graham stated that although the first defendant has asserted that the deceased paid the sum of United States twenty-one thousand dollars (US$21,000.00) to the claimant, she admitted that she did not witness that transaction. In addition, no receipts were presented to the court in support of that assertion.

[145] It was also submitted that the first defendant's evidence that Mr. Trevor McNaughton had witnessed a document which confirmed the sale of the premises to the deceased, and that he had indicated same in the claimant's presence should not be accepted as there has been no sufficient explanation for the failure to call him as a witness. Further, there was no witness statement, no witness summary, and no evidence of witness summons having been issued for Mr. McNaughton to attend to give evidence.

[146] In such circumstances, it was submitted, the court could draw adverse inferences. Reference was made to ***Wisniewski v Central Manchester Health Authority*** [1998] EWCA Civ 596, in which Brooks LJ stated:

> *"(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.*
>
> *(2) If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.*
>
> *(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.*
>
> *(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If; on the other hand, there is some credible explanation given, even if it is not wholly*

satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified."

[147] The court was invited to draw an adverse inference against the first defendant as Mr. McNaughton's evidence would have gone to the heart of the issue as to whether the deceased signed an agreement to purchase the premises from the claimant.

First defendant's submissions

[148] Mrs. Hay submitted that the claimant was not a credible witness. She indicated that in his evidence, he described the first defendant's occupation of the premises in several different ways. Reference was made to his evidence that the first defendant was a "tenant at will", a "licensee", "a tenant" and a person who had his permission to stay in the premises. Learned Queen's Counsel also referred to the claimant's evidence that the first defendant did not have his permission to remain at the premises, as her permission to occupy was derived from the deceased. The inconsistency in his evidence pertaining to the date when the first defendant commenced occupation of the premises was also highlighted. It was indicated that he had said that it was in 1976 and then stated that it was in 1982. He then said it was in 1986. He eventually said in evidence that the first defendant came to the premises with the deceased in 1980. Learned Queen's Counsel contended that on this point and several others, his evidence was inconsistent.

[149] She submitted that there is powerful evidence that the deceased was earning foreign exchange and had sufficient income to purchase the premises for United States twenty-one thousand dollars (US$21,000.00) in or around 1980. It was submitted that the deceased did in fact pay the claimant in full for the premises and that they commenced occupation in 1980, as purchasers in possession. Mrs. Hay stated that in the circumstances, the first defendant and the deceased never required the claimant's permission to take possession of the premises. She contended that at all times, the Dowes acted as owners of the premises.

Second defendant's submissions

[150] Ms. Chambers contended that the first defendant's position can be somewhat compared to that of the respondents in ***Annie Lopez v Dawkins Brown and Glen Brown*** [2015] JMCA Civ 6 as they both argued that they were purchasers in possession, having been served with notices to quit and were brought before the court for recovery of possession. She stated that Mrs. Lopez had contended that the respondents were offered an option to purchase which was never exercised, the claimant in the case at bar, contends that the deceased was offered the premises for purchase and he did not take up the offer. In both cases there was no signed Agreement for Sale before the court.

[151] It was contended that the claimant in allowing the first defendant and the deceased to continue occupying the premises free of charge for more than twenty-five (25) years on one hand, and they having undertaken substantial repairs on the other hand, are on a balance of probabilities, referable to, and explicable only in terms of the existence of an agreement to purchase the premises and the payment of purchase money.

[152] Ms. Chambers argued that there must have been some contractual agreement between the claimant as the registered owner and the deceased and the first defendant who were in possession. This she said was buttressed by the payment of money, bearing in mind the evidence that the claimant was the manager for the deceased and received money on his behalf.

[153] Counsel submitted that based on the evidence relating to the conduct and relationship of the parties, it is reasonable to infer that the claimant having agreed to sell and having accepted the purchase money before placing the deceased in possession of the premises, assured them that the said premises was theirs and would ultimately be transferred to them.

Discussion and analysis

[154] The resolution of this issue is dependent on whether there was an agreement for sale between the claimant and the deceased and if yes, whether the full purchase price was paid to the claimant which would have resulted in the deceased and the first defendant being purchasers in possession.

[155] A contract for the sale of land by virtue of section 4 of the **Statute of Frauds** is required to be in writing. It states as follows:

> *"...no action shall be brought...*
>
> (4) *or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them...unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the parties to be charged therewith or some other person thereunto by him lawfully authorized."*

[156] The claimant indicated that he had an oral agreement with the deceased and had opened a bank account to facilitate the payment of the purchase money. His evidence is that no deposits were made by the deceased or the first defendant.

[157] The first defendant has asserted that a written agreement existed which was witnessed by Mr. Trevor McNaughton. That document, according to her evidence, has been lost since 2003. She was unable to give any details as to its contents except that it was evidence that the premises had been paid for by the deceased and that it was comprised of one page and had a red stamp. Mr. McNaughton was not called as a witness and it appears to me that insufficient efforts were made to secure his attendance. Even if I accept the first defendant's evidence that a Google search was done, I have noted that Mr. McNaughton was also a member of the Melodians. Surely, some contact could have been made with other members of the music fraternity in an effort to locate him. In such circumstances, an adverse

inference may be drawn in respect of the first defendant's evidence based on ***Wisniewski v Central Manchester Health Authority*** (supra).

[158] The claimant's evidence on this issue is in my view, more credible than that of the first defendant. I have therefore accepted his evidence that no written contract existed between him and the deceased.

[159] That is, however, not the end of the matter as it has been recognised that where there are sufficient acts of part performance, an oral contract may be enforceable. In ***Dale v Hamilton*** (1846) 67 ER 955, Sir James Wigram VC stated:

> ***"****The Plaintiff admits that the agreement between himself and M'Adam was by word of mouth only, and he has not relied upon any act of part-performance in the sense which, according to the doctrines of this Court, would, in [381] general, take the case out of the Statute of Frauds. It is, in general, of the essence of such an act that the Court shall, by reason of the act itself, without knowing whether there was an agreement or not, find the parties unequivocally in a position different from that which, according to their legal rights, they would be in if there were no contract. Of this a common example is the delivery of possession. One man, without being amenable to the charge of trespass, is found in the possession of another man's land. Such a state of things is considered as shewing unequivocally that some contract has taken place between the litigant parties; and it has, therefore, on that specific ground been admitted to be an act of part-performance:* ***Morphett v. Jones*** *(1 Swanst. 172). But an act which, though in truth done in pursuance of a contract, admits of explanation without supposing a contract, is not, in general, admitted to constitute an act of part-performance taking the case out of the Statute of Frauds; as, for example, the payment of a sum of money alleged to be purchase-money".*

[160] In ***Annie Lopez v Dawkins Brown and another*** (supra) Morrison JA (as he then was), in his discussion of the doctrine of part performance stated:

> *"60. In Gray & Gray's Elements of Land Law (5th edn, 2009, para. 8.1.40), under the rubric, 'Acts sufficient to constitute part performance', the learned authors state the following:*
>
> > *'The doctrine of part performance rendered a contract enforceable, even in the absence of a written memorandum,*

> *where the claimant had done acts which, on a balance of probability, were referable to and explicable only in terms of the existence of a contract in relation to land. Although these acts did not need to be such as would demonstrate the precise terms of the contract, part performance was premised on the current existence of an actual contract. Acts of reliance were irrelevant if performed on the footing of mere negotiations which might or might not ripen later into contract'."*

[161] There is no dispute that the deceased up until his death was in possession of the premises. The first defendant is still in possession. The claimant has described the deceased and the first defendant as licensees and/or tenants at will. In cross examination, he was asked what he meant by "tenant at will" and his attempted explanation has not convinced this court that he was aware of the meaning of the term. He ended by saying that they were not tenants. Counsel for the second defendant has made heavy weather of the use of both terms by the claimant in his witness statements to describe the relationship between him and the deceased. She argued that his credibility was impugned thereby. With respect, I do not agree. The claimant is not legally trained and in any event, it is entirely within the purview of this court to determine the nature of the relationship between the parties.

[162] The first defendant has pleaded that she and the deceased were purchasers in possession. She based her claim on the existence of an agreement for sale between the deceased and the claimant and the payment of the full purchase price by the deceased. She did not provide any details of the contents of the one-page document, except to say that it was signed by the claimant and the deceased and witnessed by Mr. Trevor McNaughton. In addition, no cogent evidence was produced to substantiate her claim that the payments were in fact made. She, however, maintained that all that remained was for the premises to be transferred to the deceased.

[163] Where a purchaser has been let into possession pending completion of a sale, a licence is created. A licence may also be created in circumstances where a person is permitted to live at another person's premises free of charge, depending on the

intention of the parties. Where that possession is exclusive there is a presumption of a tenancy. However, it may be rebutted by evidence that there was no intention to enter into legal relations. In ***Cobb v Lane*** [1952] 1 All ER 1199 Somervell LJ stated the principle in the following terms:

> *"Counsel for the defendant submitted that, notwithstanding certain modern authorities, where there is exclusive occupation for an indefinite period a tenancy at will must be implied unless there is something in the facts to prevent that conclusion. I do not know that I very much quarrel with that. The real question may be: What facts do prevent that conclusion? Certainly under the old cases (and I doubt if this has been affected by the modern authorities), if all one finds is that somebody has been in occupation for an indefinite period with no special evidence of how he got there or of any arrangement being made when he went into occupation, it may be that the court will find a tenancy at will. I am assuming that there is no document, or clear evidence as to terms. The modern cases establish that, if there is evidence of the circumstances in which the person claiming to be a tenant at will went into occupation, those circumstances must be considered in deciding what the intention of the parties was. In* ***Booker v Palmer*** *Lord Greene MR said ([1942] 2 All ER 676):*
>
> > *'Therefore, what we have to decide is whether there was any evidence upon which a tenancy between the respondent and Mrs. Goldsmith could be inferred. In my opinion, there is no evidence from which any such inference could be drawn. Whether or not parties intend to create as between themselves the relationship of landlord and tenant, under which an estate is created in the tenant and certain mutual obligations arise by implication of law, must in the last resort be a question of intention. Where the parties enter into a formal document the intention to enter into formal legal relationship is obvious; but when all that happens is a quite casual conversation on the telephone, it is very much more difficult to infer that the parties are really contemplating entering into any legal relationship at all and in particular, such a special relationship as that of landlord and tenant …* ***There is one golden rule which is of very general application, namely, that the law does not impute intention to enter into legal relationships where the circumstances and the***

> ***conduct of the parties negative any intention of the kind'."***[2] [My emphasis]

[164] In this matter, the claimant stated that he invited the deceased to live at the premises in order to make him more comfortable to write. He indicated that he had a vested interest in the deceased's success as his manager and publisher. In cross examination, he stated that he recognised the deceased's earning potential and no rent was charged. In other words, it was a *quid pro quo* arrangement.

[165] In order to establish that the deceased was a purchaser in possession, the first defendant would have had to present credible evidence that she and the deceased were let into possession pending completion of the sale of the premises. She would also need to establish that the deceased paid the purchase price.

[166] Where the circumstances surrounding their being let into possession are concerned, it is the claimant's word against that of the first defendant.

[167] The claimant's evidence is that he and the deceased first discussed the sale of the premises a few years after he moved in and again in 2006. After the first discussion, arrangements were made for the deposit of funds towards the purchase price but the deceased did not fulfil his part of the bargain.

[168] The first defendant has sought to rely on her and the deceased's possession of the premises and an alleged payment of United States twenty-one thousand dollars (US$21,000.00) by the deceased. No receipts were tendered and her evidence was largely based on hearsay. It is clear that the first defendant did not witness any of the alleged payments and based on her evidence was not privy to any discussions between the claimant and the deceased concerning the premises. She also gave evidence that Mr. McNaughton who had witnessed a document evidencing its purchase, had indicated in the presence of the claimant, that the

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[2] Page 1200

deceased had paid for the premises. As stated previously in this judgment, Mr. McNaughton was not called as a witness and the explanation given for his absence is in my view, insufficient.

[169] The first defendant also relied on the testimony of Ms. Zattania Dowe, who gave evidence that the claimant had indicated to her that the deceased had bought the premises. Ms. Zattania Dowe also stated that the claimant had promised to share the money realised from the sale of the premises with her and her sister Ms. Alexis Dowe if they signed a document supporting his position that the deceased had not paid for the premises. Her evidence is, in my view, not credible. Why would the claimant offer a bribe in circumstances where there is no document evidencing the agreement or the receipt of any funds towards the purchase? In this regard, I bear in mind the first defendant's evidence that the deceased had informed the claimant that the document evidencing the sale had been lost since 2003.

[170] Ms. Zattania Dowe also gave evidence, as did the first defendant, of the deceased's "dying declaration" to the effect that the claimant was seeking to rob him of the premises. It is quite curious that the first defendant would have taken a photograph with the claimant at the deceased's funeral if she believed that he was robbing them of their home. It is also quite curious that she could not recall having done so. I have inferred from her evidence that the first defendant was saying that the deceased's sudden illness and death were caused by the dispute between him and the claimant, so much so that he died the very next day. Her inability to recall whether they had taken a picture together, and explanation for her lapse in memory does not ring true.

[171] The resolution of this issue is a question of fact. In ***Nation Hardware Ltd. v Norduth Development Co. Ltd et al*** (supra) Sykes J stated:

> *"26. Before the passing of the Act oral contracts for the sale of land were sufficient. Apparently, there was no shortage of convincing mendacious witnesses. A method of cutting down on the many fraudulent practices which [were] commonly endeavoured to be*

upheld by Perjury and Subordination of Perjury would be to require writing as a prerequisite for enforceability. Therefore any act of performance had to be very cogent because one was now starting from a position of non-enforceability. Given this situation it is hardly surprising that judges said that the act of performance had to be referable not just to a contract, but to a contract for the sale of land. Some even went as far as saying that the act had to be referable not just to a contract for the sale of land but to the land in question and no other. Once this is understood then the rejection of payment of money alone as a sufficient act of part performance should not surprise anyone.

27. I should point out that shortly after the Statute of Frauds was passed some judges thought, no doubt because of the purpose of the Act which I have set out above, that where there was no risk of perjury or fraud then an oral contract for the sale of land could be enforced even if there was no writing. This led some to think that sale of land by auctioneers and brokers were outside the statute. This view was eventually rejected (see Lord Blackburn in Maddison at page 488). All this reinforces the demand for an unequivocal act which payment of money alone could not provide.

28.The Lord Chancellor went back to 1701 and traced the decisions of the courts in order to make the point that in balancing these two principles identified in paragraph 24 the issue was what type of evidence had the cogency to pull the contract away from section 4 of the Act. It necessarily follows from this that the type of evidence required would have to be quite cogent and difficult to explain on any other reasonable and rational basis other than a prior oral agreement. Consequently, acts such as taking possession and expenditure of money, unsurprisingly, became the quintessential acts of part performance. These acts by their nature tended to be unequivocal. In fact, these acts but for the contract would have been trespasses. It does not require a great deal of imagination to appreciate that in this context payment of money, simpliciter, paled in comparison to taking possession and expenditure of money on the property by the purchaser. The conclusion would be even stronger if the purchaser who did these acts was a stranger to the vendor."

[172] The evidence presented by the first defendant in support of her assertion that the deceased had purchased the premises, is in my view neither sufficient nor credible. It is patently obvious to me that she could not with any degree of certainty speak to the payment of the purchase money. Her evidence in respect of when it was paid is also unreliable as she gave two accounts. She spoke of the purchase being

completed prior to their moving into the premises and at the same time also stated that it was during their first year of residence. It was also her evidence that the last payment was made whilst they resided at Hyde Park. In the same breath she asserted that all payments were made by the deceased whilst he was abroad.

[173] The claimant's evidence that he let the deceased into possession in or about 1980, and that the first defendant joined him there has not been shaken in cross examination. He maintained that he had invited the deceased to stay at the premises in order to make him more comfortable to write songs. It was a mutually beneficial arrangement.

[174] Having assessed the evidence and observed the witnesses in this matter, I have found the claimant to be a more credible witness than the first defendant. I accept his evidence that the premises was not purchased by the deceased. I also accept his evidence that the deceased and the first defendant resided at the premises with his consent. I find that the first defendant and the deceased were licensees.

Whether the claimant's title has been extinguished by the operation of the Limitation of Actions Act

Claimant's submissions

[175] It was submitted that based on sections 68 and 70 of the **Registration of Titles Act** (the **ROTA**), the claimant's title was indefeasible. Reference was also made to ***Pottinger v Raffone*** [2007] UKPC 22 in support of that submission.

[176] Counsel also submitted that the first defendant in order to defeat the title of the claimant had a duty to establish through cogent evidence, the elements necessary to support a claim for a possessory title. Reference was made to the Canadian case of ***Pflug v Collins*** [1952] 3 D.L.R 681, where Justice Wells stated at paragraph 1 that:

> *"A person who sets up or asserts the acquisitions of a possessory title in land either by himself or by others has the burden of*

> *establishing all the requisite elements under the Statute of Limitations. "*

[177] Mr. Graham stated that the elements which are required to prove possessory title were set out in ***JA Pye (Oxford) Ltd and Another v Graham and Another*** [2002] UKHL 30, which was applied in ***Wills v Wills*** (2003) 64 WIR 176. It was submitted that a distinction has to be made between an individual being in occupation of a premises as opposed to being in possession. Reference was made to ***Watts v Stewart*** [2016] EWCA Civ 1247, in which Sir Terence Etherton MR stated:

> *"The short answer to his point is that there is a distinction between legal exclusive possession or a legal right of exclusive possession, on the one hand, and a personal right of exclusive occupation, on the other hand: see Windeyer J in* ***Radaich v Smith*** *(1959) 101 CLR 209 at 222 approved by Lord Templeman in* ***Street v Mountford*** *at page 827. Legal exclusive possession entitles the occupier to exclude all others, including the legal owner, from the property. Exclusive occupation may, or may not, amount to legal possession. If it does, the occupier is a tenant. If it does not, the occupier is not a tenant and occupies in some different capacity".*[3]

[178] Counsel submitted that neither the deceased or the first defendant had legal exclusive possession or a right to exclusive possession. In this regard, he reminded the court of the claimant's evidence that he gave the deceased permission to occupy the premises and was at no time excluded from the premises or denied entry.

[179] Learned counsel also stated that factual possession is not proved by the mere fact of occupation. Reference was made to the following passage in the judgment of K. Anderson J in ***Seaton Campbell v Donna Rose Brown & Carlton Brown*** [2016] JMSC Civ. 157, where it was stated:

> *"In any event, mere occupation of land for a period of twelve (12) years or more, without disturbance by the title holder to that land,*

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[3] Paragraph 31

> *does not, in and of itself entitle that occupant to successfully claim that he or she/ they has/have a better title to that land, than for instance, a registered title holder of same. No doubt, the claimant and his counsel are aware of this and that is why, in the claimant's particulars of claim, particulars have been set out as to what the claimant has done on, or in relation to the relevant land, since in or about 1994. What the claimant's particulars of claim and affidavit evidence though, have not set out, is that the claimant did any of those things, so as to extinguish the right of his brother, to use and/or occupy the relevant land, at any time between April 28, 1993 and February 25, 2015. The claimant has not particularized when it was that the fence was built. Accordingly, whilst the erection of a fence is strong evidence of an intention to exclude everyone else from the property, since, the time when that intention was formed, is critically relevant in all cases pertaining to the law of adverse possession, accordingly, it follows inexorably, that the time when that fence was erected, is of critical importance."*[4]

[180] It was argued that although the first defendant gave evidence of the various improvements that were undertaken at the premises, it has not been established that those acts were done in order to extinguish the rights of the claimant as the registered proprietor.

[181] Mr. Graham also submitted that the first defendant has failed to establish that there was an intention to possess. He indicated that the evidence has shown that the first defendant came into occupation with the claimant's permission and as such cannot be deemed to be in legal possession to support a claim for possessory title. The claimant's position he said, is that the deceased was a licensee. In this regard, he referred to paragraph 7 of the Particulars of claim which reads:

> *"That as his promoter I wanted to ensure that he was comfortable and that our relationship was mutually beneficial and consequently I offered him free accommodation at my house which he occupied as a licensee."*

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[4] Paragraph [50]

[182] In the circumstances, it was submitted that it cannot be held that the first defendant acquired the premises on the basis of adverse possession, as neither she nor the deceased had the requisite intention to possess. Reference was made to ***Buckinghamshire County Council v Moran*** [1989] 2 All ER 225, in which Slade LJ stated as follows:

> *"Possession is never 'adverse' within the meaning of the 1980 Act if it is enjoyed under a lawful title. If, therefore, a person occupies or uses land by licence of the owner with the paper title and his licence has not been duly determined, he cannot be treated as having been in 'adverse possession' as against the owner of the paper title."*[5]

[183] Reference was also made to ***Ramnarace v Lutchman*** [2001] UKPC 25, in which Lord Millett stated:

> *"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."*[6]

[184] It was argued that based on the above cases, in order for the first defendant to successfully contend that she or her deceased husband had an intention to possess the premises, it would be necessary for her to adduce evidence of the date from which the twelve (12) year period began. The claimant submitted that this could only have started at a point where the licence was terminated. In this regard, it was submitted that the only evidence adduced that the licence was terminated was the Notice to Quit dated the 27th of October, 2009.

[185] The first defendant he said, sought to support her intention to possess through the following acts including:

(a) the construction of additional rooms to the premises;

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[5] Pages 232-233
[6] Paragraph 10

(b) the construction of a fence;

(c) the tiling of floors; and

(d) the repairing of the roof.

[186] Counsel pointed out that it is the claimant's evidence that the work carried out by the first defendant and/or the deceased on the premises was done with his consent whether express or implied. He pointed out that in his pleadings the claimant stated that the deceased had occupied the premises under a licence granted as a result of the fact that as the deceased's manager he wished for him to reside in comfortable surroundings. The claimant confirmed this during the cross examination by counsel for the first defendant as shown in the following exchange:

> "Question: Look at paragraph 21. What does the word licensee mean?
>
> Answer: He would maintain the place and have free board and lodge, because I wanted to ensure good writing. The favour is he will write and record and I will manage him and be his publisher.
>
> Question: So, he will write and record and you manage him and be his publisher?
>
> Answer: That was the exchange between me and him, I gave him board and lodge as where he was living was deplorable, I moved him there because I wanted him to continue to write for me."

[187] Mr. Graham also referred to the following exchange which occurred during the claimant's cross examination by counsel for the second defendant:

> "Question: Why didn't you give him notice?
>
> Answer: I just wanted to make sure he was comfortable we were good friends like family. "

[188] Counsel stated that in the unreported case of ***Ellet-Brown v Tallishire Ltd*** (29 March 1990, unreported), CA (cited by the Stephen Jourdan QC and Oliver Radley-Gardner in the text Adverse Possession, 2nd edition published by Bloomsbury Professional Limited 2011 at page 664 Para [35-25]), Lloyd LJ in commenting on an inference made by the trial judge that the construction of a brick gate post, which was being adduced as evidence of adverse possession, was impliedly consented to, stated that:

> *"It was based on the very good relations which had always existed between [the squatter's predecessor] and his neighbours, good relations which continued during [the squatter's] time."*

[189] Counsel stated that it is agreed that the claimant enjoyed a good relationship with the first defendant's family prior to the death of the deceased. Ms. Zattania Dowe who testified on the first defendant's behalf stated that the claimant was her godfather and that his son would spend holidays at the premises. Also, the claimant has stated in paragraph 10 of his affidavit filed on 25 January 2011 that he:

> *"Was aware at all times of any work being done on the property as his permission had to be sought."*

First defendant's submissions

[190] Mrs. Hay pointed out that the first defendant has relied upon sections 3 and 30 of the **Limitation of Actions Act** in defence of the claimant's claim for recovery of possession of the premises, having taken up possession of the premises in 1980 with the deceased.

[191] It was submitted that the first defendant adduced more than sufficient evidence to prove physical possession, as well as an intention to possess for her own use and benefit.

[192] Learned Queen's Counsel then referred to the payment of property taxes and the substantial improvements done to the premises from as early as 1988. It was

submitted that the totality of evidence demonstrates that the first defendant and the deceased exercised acts of ownership, possessed the premises to the exclusion of all others, treated with the premises as property owners exercising total control and did so intentionally for their own benefit and use.

[193] Mrs. Hay contended that on the first defendant's case, time would have begun to run in or around 1980 when she moved to the premises. The limitation period would have therefore, expired in or around 1992. It was submitted that from 1993 onwards, the claimant would have been barred from making any claim for possession of the premises as his title would have been extinguished.

[194] It was also submitted that the burden of proof is on the claimant to satisfy the court that his title has not been extinguished. Reference was made to ***Winnifred Fullwood v Paulette Curchar*** [2015] JMCA Civ 37 in support of that submission. Learned Queen's Counsel argued that upon an application of the legal principles established in ***Winnifred Fullwood*** to the present facts, it is clear that the claimant was dispossessed by the first defendant and the deceased. Consequently, he did not have a legal right to issue the notice to quit or advertise the premises for sale, as his right to possession had been extinguished.

[195] She stated that the evidence shows that at all material times the deceased and the first defendant took actual physical custody and control of the premises and demonstrated an intention and user consistent with ownership of the premises.

[196] She stated that according to the case law, the first defendant is only required to prove that she has been in possession of the premises, which she has done. Mrs. Hay submitted that the claimant has failed to establish his right to possession. In this regard reference was made to ***Recreational Holdings (Jamaica) Ltd v Lazarus*** [2016] UKPC 22.

[197] Learned Queen's Counsel contended that similar to the position in ***Winnifred Fullwood***, the first defendant and the deceased lived together at the property in

open, undisturbed and exclusive possession from 1980, and it was submitted, that accordingly, they jointly dispossessed the claimant.

[198] With respect to the position of a spouse remaining in a house after the other spouse leaves it, Mrs. Hay relied on the case of ***National Provincial Bank v Ainsworth*** [1965] UKHL 1, in which the court found that a wife who had remained in occupation of a house owned by her husband after their separation was not a licensee.

[199] It was submitted, therefore, that the claimant's right to bring and maintain an action in recovery of possession expired since 1992 on the first defendant's case and 1994 on the claimant's case.

Second defendant's submissions

[200] Ms. Chambers argued that it is undisputed that the first defendant and the deceased have been in continuous possession of the premises for more than twelve (12) years. She directed the court's attention to section 3 of the **Limitation of Actions Act**.

[201] Counsel stated that since the limitation period is twelve (12) years, it is important that the time the land owner was dispossessed of the land must be established. It was submitted that strong evidence was adduced to support the defendants' contention that the claimant was neither in occupation nor possession of the premises from 1980 to present.

[202] It was submitted that in the instant case, by virtue of the operation of sections 3 and 30 of the **Limitation of Actions Act**, the claimant is barred from bringing this claim as the limitation period has expired.

[203] It was argued that it is clear from the evidence that the first defendant had the intention to possess and actually possessed the premises to the exclusion of all

others. Counsel stated that the claimant commenced this suit in 2010, some 30 years after the commencement of occupation and long after his rights and interest were extinguished.

Discussion and analysis

[204] Section 68 of the **ROTA** establishes the indefeasibility of title. It states:

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

[205] In ***Pottinger v Raffone*** (2007) 70 WIR 238, Lord Rodger stated:

> *"**[20]** The main aim of this system of registration of title is to ensure that, once a person is registered as proprietor of the land in question, his title is secure and indefeasible except in certain limited circumstances which are identified in the legislation. This is achieved by s 161 of the Registration Act …*
>
> *The basic rule is that, if any proceedings are brought to recover land from the person registered as proprietor, then the production of the certificate of title in his name is an absolute bar and estoppel to those proceedings, any rule of law or equity to the contrary notwithstanding. The only situations where a certificate of title is not a complete bar to proceedings are those listed in paras (a) to (f)…*
>
> ***[24]** The duplicate certificate of title which the proprietor receives from the registrar is a most important document since, subject to the exceptions in s 161, it is incontrovertible proof of his title to the land in question. It should be accurate, there should be only one copy in circulation and that copy should be kept safe. In a perfect world nothing would go wrong. But the legislation is realistic: it recognises that things may go wrong and provides mechanisms for putting them*

> *right. If a certificate is lost or destroyed, then under s 82 the registrar may cancel it and register a new certificate in duplicate. A clerical error may have been made when the certificate was prepared, eg the lands or their boundaries may have been misdescribed or a name may be inaccurate. Or indeed some entry may have been made on the certificate as a result of wrongful or fraudulent conduct. Or the registrar may have issued a duplicate certificate when he ought not to have done. Or someone may have tricked the proprietor into parting with the duplicate certificate and so have obtained it by fraud. Or someone may have managed to obtain the duplicate certificate from the proprietor without his consent – and, so, wrongfully. Or someone may have found the duplicate certificate and wrongfully kept it without the owner's permission."*

[206] Sections 3 and 30 of the **Limitation of Actions Act**, on which the first defendant has relied states:

> *"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, land or 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.*
>
> *30. At the determination of the period limited by this Part to any person for making an entry, or brining 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."*

[207] Where the person against whom an action for recovery of possession has been brought pleads the statute of limitations, the burden is on the claimant to prove that he has not been dispossessed. In ***Winnifred Fullwood v Paulette Curchar*** (supra) McDonald-Bishop J (Ag) (as she then was) stated:

> *[38] … The English authorities that have treated with the English 1833* ***Act have proved to be quite instructive in treating with this issue. They have unequivocally established that when a claimant brings a claim to recover possession, he "must prove that he is entitled to recover the land as against the person in possession. He recovers on the strength of his own title, not on***

the weakness of the defendant's" *(emphasis added): The Laws of England, The Earl of Halsbury (1912) Volume 24, paragraph 609.*

[39] ***Even more importantly in the context of this case, the authorities have also established that where the person against whom the claimant has brought the action pleads the statute of limitations, then, the claimant must prove that he has a title that is not extinguished by the statute:*** *The Laws of England, The Earl of Halsbury, Volume 24 paragraph 606 and* ***Dawkins v Penrhyn*** *(Lord) (1878) 4 App Cas 51.*

…

[40] In ***Dawkins v Penrhyn****, their Lordships usefully noted the distinction between the operation of the Statutes of Fraud and the statute of limitations as to personal actions, on the one hand, and the statute of limitations as to real property, on the other… Albeit that the discourse was within the context of the issue of pleadings, it, nevertheless, has proved quite instructive in treating with the question as to the legal implication of the statute of limitations with respect to a claim for recovery of possession.*

According to the Lord Chancellor, Earl Cairns at pages 58 and 59:

> *"…The Statute of Frauds must be pleaded, because it never can be predicated beforehand that a Defendant who may shelter himself under the Statute of Frauds, desires to do so. He may, if it be a question of an agreement, confess the agreement, and then the Statute of Frauds will be inapplicable. With regard also to the Statute of Limitations as to personal actions, the cause of action may remain even although six years have passed. It cannot be predicated that the Defendant will appeal to the Statute of Limitations for his protection; many people, or some people at all events, do not do so; therefore you must wait to hear from the Defendant whether he desires to avail himself of the defence of the Statute of Limitations or not. But with regard to real property it is a question of title. The Plaintiff has to state his title, the title upon which he means to rely, and the Statute of Limitations with regard to real property says that when the time has expired within which an entry or a claim must be made to real property, the title shall be extinguished and pass away from him who might have had it to the person who otherwise has the title by possession, or in whatever other was [sic] he may have it…" (Emphasis added)*

In the same case, Lord Penzance at page 64 treated with the distinction this way:

> *'…The Statute of Limitations as applied to debts is a statute that does not put an end to the debt, it merely prevents the remedies; and it may be taken advantage of, or it may not be taken advantage of, according to the volition of the Defendant. But the Statute of Limitations applying to real property, as has been pointed out, does more than that; it goes to the root of the Plaintiff's claim…' (Emphasis mine)*

[41] The position had not changed even with the repeal of the 1833 Act. In Halsbury's Laws of England, 3rd edition, volume 24, at paragraph 373 in referring to the English 1939 statute of limitations, the learned editors reiterated that in an action for recovery of possession of land, the claimant "must on the face of his pleadings show, and must at the trial prove, a legal title to possession not barred by the statute" (Emphasis added). They went on to note further that except where a defendant is in possession by virtue of a lease or tenancy granted by the claimant or his predecessor in title, the defendant need not plead the statute, but may simply plead that he is in possession. Also, they noted that in cases in which the title to land incidentally comes in question, for example in the cases of trespass to land, there is no reason for pleading the statute, the proper mode of taking advantage of it by the defendant is a plea that denies that the land belongs to the party dispossessed.

[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 claim and its operation is not dependent on whether the defendant choses 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.

[43] It follows then that all that Miss Fullwood needed to have said was that she was in possession of the property or that the property

does not belong to Mrs Curchar because she has been dispossessed. She required no locus standi to say that because the statute itself says that a claim not brought within the requisite period of limitation is barred and the claimant's title is extinguished simply by operation of time he had been out of possession. This is quite separate and apart from the question as to the legal capacity of the person in whose favour it is extinguished. It is for that reason that a trespasser or a squatter may benefit from the statute.

[44] This means, therefore, that Mrs Curchar's right to possession of the property was subject to the statute of limitations and so it was incumbent on her, in discharging both the evidential and legal burdens placed on her as claimant, not to only state at trial the title on which she was relying but to prove on the evidence that it was a subsisting one by virtue of the fact that she had been in possession within the period of limitation, or in other words, that her title was not extinguished by operation of law." [My emphasis]

[208] In ***JA Pye (Oxford) Ltd and Another v Graham and Another*** (supra), Lord Browne-Wilkinson stated:

"[39] *What then constitutes 'possession' in the ordinary sense of the word?*

POSSESSION

[40] *In* ***Powell v McFarlane*** *(1977) 38 P&CR 452 at 470 Slade J said:*

'(1) In the absence of evidence to the contrary, the owner of land with the paper title is deemed to be in possession of the land, as being the person with the prime facie right to possession. The law will thus, without reluctance, ascribe possession either to the paper owner or to persons who can establish a title as claiming through the paper owner.

*(2) 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 ("*animus possidendi*").'*

Counsel for both parties criticised this definition as being unhelpful since it used the word being defined—possession—in the definition itself. This is true: but Slade J was only adopting a definition used by Roman law and by all judges and writers in the past. 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****."* [My emphasis]

[209] In ***Buckinghamshire County Council v Moran*** [1989] 2 All ER 225, Slade LJ stated the principle as follows:

> *'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 (animus possidendi). A person claiming to have dispossessed another must similarly fulfil both these requirements."*[7]

The learned judge also went on to state as follows:

> *"Possession is never 'adverse' within the meaning of the 1980 Act if it is enjoyed under a lawful title. If, therefore, a person occupies or uses land by licence of the owner with the paper title and his licence has not been duly determined, he cannot be treated as having been in 'adverse possession' as against the owner with the paper title.*[8]

He continued:

> *"I turn then to consider the first of the two requisite elements of possession. First, as at 28 October 1973 did the defendant have factual possession of the plot? I venture to repeat what I said in* ***Powell v McFarlane*** *(1977) 38 P & CR 452 at 470–471:*
>
> > *'Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession … Thus an owner of land and a person intruding*

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[7] Page 232
[8] Pages 232-233

> *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.'*
>
> *On evidence it would appear clear that by 28 October 1973 the defendant had acquired complete and exclusive physical control of the plot. He had secured a complete enclosure of the plot and its annexation to Dolphin Place. Any intruder could have gained access to the plot only by way of Dolphin Place, unless he was prepared to climb the locked gate fronting the highway or to scramble through one or other of the hedges bordering the plot. The defendant had put a new lock and chain on the gate and had fastened it. He and his mother had been dealing with the plot as any occupying owners might have been expected to deal with it. They had incorporated it into the garden of Dolphin Place. They had planted bulbs and daffodils in the grass. They had maintained it as part of that garden and had trimmed the hedges. I cannot accept counsel's submission for the council that the defendant's acts of possession were trivial. It is hard to see what more he could have done to acquire complete physical control of the plot by October 1973. In my judgment, he had plainly acquired factual possession of the plot by that time.*
>
> *However, as the judge said, the more difficult question is whether the defendant had the necessary animus possidendi. As to this, counsel for the council accepted the correctness of the following statement (so far as it went) which I made in* Powell v McFarlane *(at 471–472):*
>
> > *'… the* animus possidendi *involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow'."*[9]

[210] In ***Wills v Wills*** (2003) 64 WIR 176, Lord Walker of Gestingthorpe who delivered the decision of the Board stated:

> *"**[17]** Despite the abolition of the technical doctrine of adverse possession the phrase continued to be used as a convenient*

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[9] Page 236

> *shorthand for the sort of possession which can with the passage of years mature into a valid title, that is possession which is not by licence and is not referable to some other title or right. So in* ***Moses v Lovegrove*** *[1952] 2 QB 533 at 539, Sir Raymond Evershed MR, speaking of the Limitation Act 1939 (England), said:*
>
> > *'The notion of adverse possession, which is enshrined now in s 10, is not new; the section is a statutory enactment of the law in regard to the matter as it had been laid down by the courts in interpreting the earlier limitation statutes.'*
>
> *Those observations were cited with approval by the Board in* ***Goomti Ramnarace v Harrypersad Lutchman*** *[2001] UKPC 25, 59 WIR 511, in which Lord Millett said (at p 515, para [10]):*
>
> > *'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'."*

[211] The first defendant has asserted in the alternative, that the claimant has been dispossessed on account of her and the deceased's occupation of the premises for over twelve years. On the facts, it is clear that they have been in factual possession at the latest since 1982. That is however, insufficient to ground a claim for possessory title. There must also be an intention to dispossess the claimant.

[212] In order to have an intention to dispossess, it seems to me that one must be aware that someone else has the right to possession. The requisite intention is the exercise of custody and control for one's own benefit to the exclusion of the registered owner.

[213] The first defendant, as counsel for the claimant stated, has asserted two inconsistent positions. How can the first defendant claim to be a purchaser in possession and in the same breath, claim a possessory title? A purchaser in possession occupies with the permission of the vendor. One would be hard pressed to find that in such circumstances there is an intention to possess for one's personal benefit. Permission to occupy to my mind is noticeably absent where a possessory title is being claimed. In ***Wills v Wills*** (supra) Lord Walker of

Gestingthorpe described adverse possession as *"possession which is not by licence and is not referable to some other title or right".*[10] This position was endorsed by the Court of Appeal in ***Recreational Holdings (Jamaica) v Lazarus and another*** (supra), in which Morrison JA (as he then was) stated:

> *"[53] Turning now to the textbooks, in the work, Adverse Possession, by Stephen Jourdan QC and Oliver Radley-Gardner (2nd edn), to which we were also referred by Mr Wood, the learned authors preface their discussion of the cases with the comment (at para. 6-16) that, generally speaking, "lawful possession is not adverse". To this they add that "…possession by a squatter is only adverse if the owner is entitled to recover possession against the squatter". Not dissimilarly, in The Law of Real Property, 7th edn, Megarry & Wade define adverse possession (at para. 35-16, citing, among other cases,* ***Ramnarace v Lutchman****) as "possession inconsistent with and in denial of the title of the true owner, and not, e.g., possession under a licence from him or under some contract or trust". And, in Elements of Land Law (5th edn), under the rubric "Adverse possession cannot be consensual", Grey & Grey say this (at para. 9.1.46):*
>
> > *'The adverse quality of a claimant's possession is more generally negatived by any consent by the paper owner to the claimant's presence on the land. Thus possession is never 'adverse' if enjoyed under a lawful title or by the leave or licence of the paper owner. For example, the presence of a landlord-tenant relationship between the paper owner and the occupier is plainly inconsistent with a claim of adverse possession. Nor can adverse possession stem from other forms of mandate or permission given by the paper owner. Thus no adverse possession arises on the basis of occupation which is exercised at the request of or with the consent of the paper owner.'*
>
> *[54] In a footnote to this passage (on page 1181), after referring to* ***Buckinghamshire County Council v Moran*** *and* ***Ramnarace v Lutchman,*** *Grey & Grey go on to add a further comment (based on the judgment of Schiemann LJ in* ***Rhondda Cynon Taff County Borough Council v Watkins*** *[2003] 1 WLR 1864, para. [25]):*

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[10] Paragraph 17

> *'A squatter's possession is not prevented from being adverse merely because the squatter happens, for unconnected reasons, to have some lawful title. Possession ceases to be adverse only if it is possession under that lawful title.'*
>
> *[55] All these formulations of the principle suggest, it seems to me, that, generally speaking, the notion of possession under a 'lawful title' by a squatter is, as Mr Wood submitted, referable to possession by virtue of the leave, licence or consent of the paper title owner. In my view, even if it is not possible to explain all the cases in this way (in* ***Doe d Milner v Brightwen****, for instance, the widower's possession was probably neither by leave nor licence, though it was clearly by virtue of what Lord Walker described in* ***Wills v Wills*** *as "some other title or right"), they all support the proposition advanced by Mr Wood in his skeleton argument (at para. 25) that "adverse possession cannot be claimed by a person whose possession was obtained and continued by virtue of the consent, grant or otherwise from the true owner whom he claims to have dispossessed". The important factor on all the authorities is that the squatter's possession, in order to ground a claim for adverse possession, must be (i) inconsistent with and in denial of the title of the true owner; and (ii) such that the owner is entitled to recover possession against the squatter.*

[214] I have already concluded that the deceased and the first defendant were let into possession by the claimant and as such were licensees. Mrs. Hay sought to rely on ***National Provincial Bank v Ainsworth*** (supra) in support of her argument that where a wife remains in occupation after the death of her husband she is not a mere licensee. With respect, that case is of no assistance to the first defendant. In that case, the parties had separated and the husband who was the registered owner of the property had transferred it to a company which granted a mortgage in favour of the appellant. The court held that she was not a licensee as against her husband and her right to occupy the premises was personal as against him, but not third parties. In those circumstances, the appeal was allowed and an order for possession made against her.

[215] Any claim by the first defendant that she has acquired a possessory title must therefore relate to the period after the licence was terminated. The only evidence of termination in this matter was the service of the notice to quit which occurred on 27 October 2009.

[216] The deceased and the first defendant occupied the premises with the consent of the claimant. I have found that the first defendant continued to occupy the premises with his consent until 27 October 2009. This claim was filed in 2010. There is therefore in my view, no basis on which the court could find that he had been dispossessed.

Whether the claimant is estopped from asserting his right to ownership

Claimant's submissions

[217] Mr. Graham submitted that the pleadings do not set out the ingredients necessary to establish title by proprietary estoppel. Reference was made to ***Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd*** [1979] EWHC Ch 1, where Oliver J stated the principle thus:

> *"If A, under an expectation created or encouraged by B that A shall have a certain interest in land thereafter, on the faith of such expectation and with the knowledge of B and without objection from him, acts to his detriment in connection with such land, a Court of Equity will compel B to give effect to such expectation."*

[218] Reference was also made to ***Thorner v Majors and others*** [2009] UKHL 18, where Lord Walker stated at paragraph 29 that the doctrine:

> *"…is based on three main elements, a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance."*

[219] He pointed out that the claimant maintained that he had not represented to the deceased and the first defendant that he had no interest in the premises. It was also submitted that the first defendant has failed to establish that the claimant represented to either her or the deceased that they were to acquire the premises. Learned counsel stated that the first defendant indicated that the reasons for the improvements to the premises were, the growing size of her family, the need to improve the security at the premises and to recover from the damage done by hurricane Gilbert.

[220] It was submitted that the improvements were not made with a view of ownership, but were necessary for the first defendant's family to comfortably and securely reside at the premises. Specific reference was made to the following parts of her testimony:

(1) The first defendant pointed out that the wall surrounding her premises was so short that:

"my kids could jump over it"

(2) the cupboard was made of bagasse board and would swell when exposed to moisture.

(3) The roof had to be fixed following the passing of hurricane Gilbert in 1988, as water was seeping through creases in the roof.

(4) "...we had a break in, people could walk in".

[221] He stated that even if the court were to find that the first defendant had established an interest by virtue of proprietary estoppel, it is trite that the doctrine of proprietary estoppel is an equitable one and that its application when necessary, should be based on equitable principles. It was submitted that the court should consider the "minimum equity to do justice" and then look at the circumstances in order to decide in what way the equity can be satisfied. The minimum equity necessary to do justice it was submitted, should be considered by juxtaposing the detriment suffered and the benefit already derived in circumstances.

[222] It was submitted that even if the court finds that all the elements of proprietary estoppel have been made out, the fact that the first defendant and her family have occupied the premises rent free since 1982, conferred a benefit which should be balanced against their expenditure. Reference was made to ***Sledmore v Dalby*** [1996] EWCA Civ 1305, in which the English Court of Appeal found that the expenditure incurred by the claimant in improving a property on the basis of assertions by the owners that that property "would be his one day", should be

weighed against the fact that he had enjoyed rent-free occupation of the property for over 18 years after the improvements had been carried out. Lord Justice Hobhouse said at paragraph 1 of page 30 of the judgment that:

> *"…the effect of any equity that may at any earlier time have existed has long since been exhausted and no injustice has been done to the defendant."*

[223] It was further submitted that based on ***Jennings v Rice*** [2002] EWCA Civ 159, the court should only award the "minimum necessary to satisfy the equity". In that case Mr. Jennings, who was a gardener and bricklayer, sued the administrators of his former employer, for a large house and furniture (worth £435,000.00) on the ground that he had done substantial work for the owner without being paid and had been given an assurance he would get it. The English Court of Appeal in assessing the judgment of High Court Judge HHJ Weeks QC in which he awarded Mr. Jennings the sum £200,000.00 pursuant to the doctrine of proprietary estoppel, held that he had made a correct assessment as proportionality was essential between expectation and detriment in deciding how to satisfy an equity based on proprietary estoppel. The Court of Appeal approved the first instance decision on quantum and recounted the decision of the High Court Judge at paragraph 15 of the judgment where Lord Justice Aldous stated that:

> *"He (High Court Judge HHJ Weeks QC) reasoned that Mr. Jennings would probably need £150,000 to buy a house. He concluded: "I do not think that he could complain that he had been unfairly treated if he had been left £200,000 in Mrs Royle's will. Most people would say that she would, at least, then have performed her promise to see him all right. The quality of her assurance affects not only questions of belief, encouragement, reliance and detriment, but also unconscionability and the extent of the equity.*
>
> *In my judgment the minimum necessary to satisfy the equity in the present case is the sum of £200,000. "*

[224] On the basis of the above authority, it was submitted that the first defendant should not be assisted any further as she has enjoyed rent free possession since 1980, and on the balance of equity would not need to be awarded any further benefit.

First defendant's submissions

[225] Learned Queen's Counsel submitted that in examining the first defendant's assertion of a proprietary estoppel arising on the present facts, the court should be mindful of the Court of Appeal case of ***Annie Lopez v Dawkins Brown & Glen Brown*** (supra). She outlined the facts of the case. She then directed the court's attention to paragraph 73 of the judgment, in which the Court of Appeal set out ingredients necessary to establish a claim based on proprietary estoppel.

[226] Mrs. Hay submitted that, although proprietary estoppel is not based on contract, the nature and terms of any agreement between the parties is relevant and ought to be examined. Where there is no agreement it must first be determined whether any representation has been made by the landowner capable of giving rise to the expectation that he will not insist on his legal rights. Secondly, there must be evidence of reliance on that representation. Thirdly, the person relying on the equity must have done so to his detriment.

[227] She submitted that in light of the claimant's assurances that the title would be transferred and the first defendant's reliance on it which led to her expending a significant sum of money on the improvement of the premises, it is unconscionable for the claimant to assert his proprietary interest.

[228] She contended that the court must look at the circumstances in each case to decide in what way the equity can be satisfied. Mrs. Hay submitted that in the instant case, based on the length of the first defendant's occupation, her reliance on the claimant's assurances, the various improvements effected to the premises, the costs involved, the fact that at all material times the claimant knew of the significant work done, she would suffer severe detriment if an order for possession is granted.

Second defendant's submissions

[229] Ms. Chambers submitted that the evidence fully supports the contention that the claimant gave an assurance and or representation of rights to the premises. Reference was made to ***Ramsden v Dyson*** [1866] LR1 HL 129 and ***Crabb v Arun District Council*** [1975] 3 All ER 865, in support of this submission.

[230] She argued that the evidence relating to the conduct and relationship of the parties when assessed leads to one conclusion, that is, the claimant having agreed to sell and accepted the purchase money before placing the deceased in possession of the premises, assured them that the premises was theirs and ultimately the premises would be transferred.

[231] It was submitted that once the court finds that the elements of proprietary estoppel are established an equity arises. Counsel argued that the court must then go on and decide in what way the equity should be satisfied. It was submitted that when all the circumstances are considered the court would be well within its rights to adopt the position taken in ***Annie Lopez v Dawkins Brown and Glen Brown*** (supra), that a refund of the sums spent would be insufficient to satisfy the equity and do justice between the parties. It was submitted that in the circumstances, the defendants should be awarded an equitable interest in the premises.

Discussion and analysis

[232] Proprietary estoppel or estoppel by acquiescence or encouragement is a means by which proprietary rights may be created. The doctrine may be invoked where based on representations made by the legal owner of land, the other party believes that he has or will acquire some right or interest in the land and has acted to his detriment. It applies where the owner having promised an interest in land acquiesces in the development of the land and it would be unconscionable for the

owner to assert his strict legal rights.[11] In ***Annie Lopez v Dawkins Brown and another*** [2015] JMCA Civ 6 Morrison JA (as he then was),stated:

> *"[68] The modern law of proprietary estoppel is aptly summarised by the authors of Gray & Gray in this way (at para. 9.2.8): "A successful claim of proprietary estoppel thus depends, in some form or other, on the demonstration of three elements:*
>
> *• representation (or an 'assurance' of rights)*
>
> *• reliance (or a 'change of position') and*
>
> *• unconscionable disadvantage (or 'detriment').*
>
> *An estoppel claim succeeds only if it is inequitable to allow the representor to overturn the assumptions reasonably created by his earlier informal dealings in relation to his land. For this purpose the elements of representation, reliance and disadvantage are inter-dependent and capable of definition only in terms of each other. A representation is present only if the representor intended his assurance to be relied upon. Reliance occurs only if the representee is caused to change her position to her detriment. Disadvantage ultimately ensues only if the representation, once relied upon, is unconscionably withdrawn."*

[233] The learned Judge also stated:

> *"[73] Although proprietary estoppel is not based on contract, it is therefore always necessary to have regard to the nature and terms of any agreement between the parties.* ***In the absence of agreement, the important starting point must be, firstly, whether there has been a representation (or assurance) by the landowner, capable of giving rise to an expectation that is not speculative, that she will not insist on her strict legal rights. Secondly, there must be evidence of reliance on the representation (or change of position on the strength of it) by the person claiming the equity. And, thirdly, some resultant detriment (or disadvantage) to that person arising from the unconscionable withdrawal of the representation by the landowner must be shown. But unconscionability, standing by***

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[11] See ***Taylor Fashions Ltd v Liverpool Victoria Trustees Co Ltd*** [1982] QB 133 at 147

itself, without the precedent elements of an estoppel, will not give rise to a cause of action*."* [My emphasis]

[234] In Megarry and Wade, the Law of Real Property, 8th edition, the learned authors have stated the doctrine in the following terms;

> *"…without attempting to provide an exclusive definition, it is possible to summarise the essential ingredients of proprietary estoppel as follows:*
>
> *(a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that he has or will enjoy some right or benefit over O's property;*
>
> *(b) in reliance upon this belief, C acts to his detriment to the knowledge of O; and*
>
> *(c) O then seeks to take unconscionable advantage of C by denying him the right or benefit which he expected to receive."*[12]

[235] In ***Willmott v Barber*** (1880) LR 15 Ch. D. 96 Fry J stated:

> *"It requires very strong evidence to induce the Court to deprive a man of his legal right when he has expressly stipulated that he shall be bound only by a written document. It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition.* ***A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights.*** *What, then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the*

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[12] Paragraph 16-001

> *plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do."*[13]

[236] In this matter, having found that the deceased and the first defendant were not purchasers in possession, I reject the first defendant's evidence that the claimant had promised to transfer the premises to the deceased and/or the deceased and the first defendant. Whilst I have no doubt that the deceased and the first defendant effected improvements to the premises, I am of the view that they were neither induced, encouraged or allowed to do those acts based on any representation made to them by the claimant that they had or would obtain an interest in the premises. In the circumstances, the issue of proprietary estoppel does not arise.

Conclusion

[237] In light of the above, I have concluded that the premises was not sold to the deceased, and as such the deceased and the first defendant were not purchasers in possession. They were licensees having been let into possession by the claimant, and the first defendant was given permission to remain there until she was served with a notice to quit. In those circumstances, the claimant has not been dispossessed of his interest in the premises. There is also no basis on which to invoke the equitable doctrine of proprietary estoppel.

[238] My orders are as follows:

(1) Judgment is awarded to the claimant on the claim and counterclaim.

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[13] Pages 105-106

(2) The defendant is required to vacate the premises located at 41 Orchard Avenue, Kingston 20 in the parish of St. Andrew, registered at Volume 1385 Folio 409 of the Register Book of titles on or before 31 October 2020.

(3) Costs on the claim are awarded to the claimant against the defendants to be taxed or agreed.

(4) Costs on the counterclaim are awarded to the claimant against the first defendant to be taxed or agreed.