[2022] JMSC Civ 194

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2019CV02929

BETWEEN	**JOY MAURIE SCHUNCK**	**1ST CLAIMANT**
AND	**ALRED THEODOR TISCHER**	**2ND CLAIMANT**
AND	**CARLENA RATTIGAN-VANREETH**	**3RD CLAIMANT**
AND	**STEVE STERLING**	**DEFENDANT**

TO BE TRIED WITH CLAIM NO. SU2019CV02930

BETWEEN	**JOY MAURIE SCHUNCK**	**1ST CLAIMANT**
AND	**ALRED THEODOR TISCHER**	**2ND CLAIMANT**
AND	**CARLENA RATTIGAN-VANREETH**	**3RD CLAIMANT**
AND	**KEMAR KELLY**	**DEFENDANT**

AND

BETWEEN	**STEVE STERLING**	**1ST ANCILLARY CLAIMANT**
AND	**NATALEE STERLING**	**2ND ANCILLARY CLAIMANT**
AND	**JOY MAURIE SCHUNCK**	**1ST ANCILLARY DEFENDANT**
AND	**ALFRED THEODOR TISCHER**	**2ND ANCILLARY DEFENDANT**
AND	**CARLENA RATTIGAN-VANREETH**	**3RD ANCILLARY DEFENDANT**
AND	**REMA GREEN**	**4TH ANCILLARY DEFENDANT**

IN CHAMBERS

Miss Catherine Minto instructed by Nunes Scholefield DeLeon and Co for the Claimants/Ancillary Defendants.

Mr Garth McBean KC and Miss Cavelle Johnston instructed by the Law Office of Cavelle Johnston for the Defendants/Ancillary Claimants

Heard; March 30 and 31, 2022 and November 4, 2022

Whether claimant entitled to possession of disputed property - Proprietary estoppel - adverse possession - whether ancillary claimants entitled to beneficial interest in property.

PETTIGREW-COLLINS, J

INTRODUCTION

[1] The first and second claimants are now the registered owners of the disputed property consisting of two lots of land (lots 12 and 13). They are seeking to recover possession of the property from Steve Sterling and Kemar Kelly. They say that Natalee Silvera is not in occupation because she now resides overseas. The disputed portion is part of a larger portion of land which consists of a third lot (11), in relation to which there is presently no dispute. These lots were originally registered in the name of Rema Green since the 1970s. In 2018, lots 12 and 13 were transferred to the three claimants, and subsequently to the first and second claimants. The elderly sister of Rema Green, Gloria Rattigan occupies a house which was built by her and/or her husband on the disputed property. Gloria Rattigan now suffers from dementia. The ancillary claimants assert that Gloria Rattigan holds the beneficial interest in lots 12 and 13 by virtue of estoppel or by adverse possession. They also claim a beneficial interest in those lots.

[2] Natalee Silvera claims to have a beneficial interest in that house which is also occupied by Gloria Rattigan and Natalee's son Kemar Kelly. She claims that interest on the basis that Gloria told her that the house belonged to her and she expended monies towards the improvement of the house. Steve Sterling constructed a plaza

on the property. He claims that he constructed it with the permission of Gloria Rattigan and the approval of the then registered owner Rema Green. There is dispute as to whether that building was constructed with the encouragement of Rema Green. There is also dispute surrounding the date of construction of that building.

[3] The defendants/ancillary claimants filed final submissions in the matter on the 31st of May 22, while the claimants/ancillary defendants filed their final submissions on the 29th of July, 2022. The court is grateful for the extensive submissions. Portions of these submissions will be set out in the course of this judgment.

THE CLAIM

[4] The claimants, Joy Maurie Schunck, Alfred Theodor Tischer and Carlena Rattigan-Vanreeth seek in two separate claims, to recover possession of property located at Mango Valley, St. Mary, from Steve Sterling, the defendant in Claim No. SU2019CV02929 and Kemar Kelly, the defendant in Claim No. SU2019CV02930.

[5] The claimants seek similar orders against the defendant in each claim. The orders are as follows:

1. An Order for Recovery of Possession against the Defendant in respect of ALL that parcel of land part of Eddesfield in the parish of Saint Mary, being the Lots numbered Twelve and Thirteen on the Plan part of Eddesfield of the shape and dimensions and butting as appears by the plan thereof, and being the lands registered Volume 989 Folio 172 and Volume 989 Folio 173 of the Register Book of Titles, also referred to as Mango Valley in the Parish of Saint Mary.

2. In Claim No.SU2019CV02929 against Steve Sterling, damages and mesne profits in respect of the Defendant's use and occupation of the said lands from the date of initial occupation to the date of judgment or earlier cessation of occupation.

3. In Claim No. SU2019CV2930 against Kemar Kelly, damages and mesne profits in respect of the said lands from the date of service of the notice to quit to the date of judgment or earlier cessation of occupation.

4. A full and proper accounting in respect of any and all rents, profits and damages earned and/or caused by the Defendant's continued use, occupation and/or rental of the property.

5. The Registrar of the Supreme Court is to conduct an inquiry and taking of accounts to determine the amount of rents and/or profit made by the Defendant and any and all damages caused by the Defendant's use, occupation and rental of the property,

   (i) In Claim No. SU2019CV02929- from the date of the Defendant's initial use and occupation to the date of the judgment or earlier cessation of occupation.

   (ii) In Claim No. SU2019CV02930- from the date of the expiration of the Notice to Quit to the date of the judgment or earlier cessation of occupation.

6. Interest on such sum awarded by the Court on Mesne profits and pursuant to the accounting exercise to be conducted by the Registrar, at such rate and for such period as this Honourable Court deems fit.

7. An injunction restraining the Defendant, his servants and/or agents from interfering with the Claimants' quiet enjoyment of the lands registered at Volume 989 Folio 172 and Volume 989 Folio 173 of the Register Book of Titles, and from taking any steps to bar the Claimants from the property.

8. An injunction restraining the Defendant, his servants and//or agents from dealing with the parcels of land at Volume 989 Folio 172 and Volume 989 Folio 173 of the Register Book of Titles, in any manner that is adverse to the Claimant's title and interest, including but not limited to steps being taken by the Defendant to:

    (i) Make improvements, alterations and additions to the said properties
    (ii) Let, sublet and lease the properties to third parties.

9. Costs to the Claimant.

10. Such further and/or other relief as this Honourable Court deems fit.

THE ANCILLARY CLAIM

[6] Natalee Silvera and Steve Sterling brought an ancillary claim against the claimants in Claim No. SU2019CV02929 and Rema Green seeking declarations to the effect that transfers No. 2140099 and 2255156 dated 9th day of August 2018 and 10th day of June 2020 of the disputed property to the claimants by way of gift are invalid, that the ancillary claimants have an equitable interest in the disputed property, that the ancillary claimants are the beneficial owners of portions of the disputed property and an order that the entire portion of land depicted as lots 12 and 13 in the Sketch Diagram of Fitz M. Henry dated 14th of April 2021 be transferred to the ancillary claimants. The ancillary defendants also sought a number of orders in the alternative. They also sought various consequential orders. The substantive orders sought include the following:

1. That the ancillary claimants are beneficial owners of the portions of the disputed property except the slaughterhouse, shed and family grave by way of adverse possession and by operation of sections 3 and 30 of the Limitation of Actions Act.

2. That Natalee Silvera, by virtue of her extensive contributions of labour and money in the improvement of the dwelling house situated at lot 12 is entitled to a beneficial interest in the property to be determined by the court,

3. That the claimants hold lots 12 and 13 entirely in trust for the ancillary claimants except the portion on which the slaughterhouse, shed and family grave is situated.

4. That Steve Sterling is entitled to the portion of land on which the two storey plaza is depicted in sketch diagram of Fitz M. Henry dated the 14th of April 2021, that by virtue of Steve Sterling's extensive contributions of labour and money in the construction of a plaza shop on lot 12 of the disputed property; he is entitled to compensation in the sum of five million dollars or the sum to be determined by a licensed valuator, whichever sum is greater, plus interest,

5. That by virtue of the doctrine of proprietary estoppel, Steve Sterling is entitled to an equitable charge or lien on the said premises for the amounts so expended.

6. An order that the ancillary defendants may not dispose of the disputed property without the consent of the claimants or the order of the court. An order restraining the ancillary defendants and their agents from interfering with the ancillary claimants' quiet enjoyment of disputed property.

[7] The claims were consolidated. I shall firstly set out the evidence in support of the claim as well as that in defence of the ancillary claim. I will then set out the evidence in defence of the claims and that in support of the ancillary claim. The evidence generally is voluminous and contained in multiple affidavits filed by the individuals concerned. I shall attempt to set out the aspects that I consider necessary in order to resolve the issues raised.

THE PARTIES AND WITNESSES

[8] The parties and witnesses in these claims are all related. The first claimant is the daughter of the third claimant Carlena Rattigan and the spouse of the second claimant Alfred Theodor Tischer. The defendant in claim no.SU2019CV02929 Steve Sterling is the nephew of the third claimant and the first cousin of the first claimant. The defendant in claim SU2019CV02930 is the great-nephew of the third claimant and the son of the first ancillary defendant Natalee Silvera. Rema Green the fourth ancillary defendant is the sister of the third claimant. Gloria Rattigan who is not a party but whose name will feature prominently in these claims is the sister of Carlena Rattigan, Rema Green and Barry Rattigan, and Norma Rattigan who is a witness for the defendants. The claimants' witness Phillipa Green is the daughter of Rema Green. Mellody is the daughter of Carlena and sister of Joy Maurie Schunck. Steve and Natalee are the children of Norma. The parties and witnesses will for the most part be referred to by their first names, purely as a matter of convenience and simplicity.

THE ISSUES

[9] The issues raised in these claims include the following:

1. Whether there is evidence of fraud so as to defeat the claimants' title to the disputed lands;

2. Are the claimants entitled to possession of the disputed property or any portion of it.

3. What is Gloria's status vis a vis the property;

4. Whether the ancillary claimants have acquired any interest in the disputed property or any portion of it by virtue proprietary estoppel or through the acquisition of a possessory title;

5. Whether the claimants are bound by an equity in favour of Steve?

The issues will not however be discussed in the manner I have stated them. As a matter of convenience, I will address the issues relating to the claimants, Steve, Natalee and Kemar as well Gloria Rattigan who is not a party to any of the claims, under headings bearing those nomenclatures.

CLAIMANTS/ANCILLARY DEFENDANTS' EVIDENCE'

Joy Maurie Schunck and Alfred Theodor Tischer

[10] Joy Maurie Schunck and Alfred Theodor Tischer gave joint affidavit evidence in respect of Claims No. SU2019CV02929 and SU2019CV02930.The affiants deposed that they are two of the registered proprietors of the disputed property. Further that the Defendants entered into possession of the disputed property without the consent or authority of the registered proprietors. The affiants also stated that both Steve Sterling and Kemar Kelly were served with notice to quit on June 27, 2018 and March 16, 2019, respectively, but both have still remained in possession of the disputed property.

[11] Joy gave an affidavit in response to the ancillary claim and to Steve Sterling's Affidavit in Response to Claim No. SU2019CV02929. She stated that Gloria has never lived on lot 13 or any portion thereof and that lot 13 houses Barry's slaughter house and her grandmother Gilda Hurst's grave.

[12] Joy deposed that she moved on to the disputed property in 1980 as a child and at this time there was only one building on the property which was located on lot 11, where she resided with Gilda Hurst. She stated that at this time lots 12 and 13 were empty and remained so when she moved to Germany in 1987. It is the evidence of the claimants and their witnesses that there was only one building on the entire property comprised of the three lots in the initial stage.

[13] She recounted that Gloria was merely occupying a portion of lot 12 with Rema's permission and that Gloria's permission was terminated when the property was gifted to the claimants. She relied on a letter dated 7th November 2018 from Mrs

Veroneeth McKenzie Morris addressed to Gloria Rattigan, Kemar Kelly and Natalee Silvera in support of this position. The letter required the addressees to cease and desist construction on the land and offered them the option of entering into a lease agreement or vacating the property failing which they would be served with notice to quit. She gave additional evidence that as soon as the property was gifted to the claimants, she caused a letter to be written to Steve advising him of their interest and demanded possession of the property that he claimed he was occupying with Rema's permission.

[14] Joy also stated that Steve continued to build even after he was sued and accordingly denied that he is entitled to compensation or any of the reliefs sought against the claimants. She stated that as far as she is aware, the plaza is an illegal construction since Steve did not obtain building approval from the relevant authority to erect the plaza.

[15] It was her evidence that the transfer was executed by Rema because only Alfred Tischer came forward to assist her when the bank was trying to sell lots 11, 12 and 13. She gave evidence that Natalee was not prepared to help with the payment. Joy also stated that after the bank was paid, Gloria carried out work on the house where she lives against the claimants' expressed objection.

[16] Joy was permitted to respond to Steve's and Natalee's affidavits filed the 15th and 4th of March 2022 respectively. She stated that Gloria did not build the house on lot 12. She further gave evidence that as far as she is aware Gloria has never had a job and her husband who operated a shop took care of her. She said that Gloria was later assisted by family including Carlena. She also stated that Gloria now suffers from severe dementia. She said that she paid property tax for the disputed property from 2015 onward. She exhibited receipt dated May 3, 2018 in proof of same.

[17] Further, she highlighted that the sketch plan commissioned by Steve confirms that neither the plaza nor the home where Kemar resides is located on lot 13. Joy also

stated that Gloria has never controlled lots 12 or 13. It was also her affidavit evidence that she does not know who paid for the renovations and expansion of Gloria's home but the renovations took place after 2018.

Carlena Rattigan-Vanreeth

[18] Carlena swore to an affidavit in which she stated that Rema acquired lots 11, 12 and 13 in her name and was the only owner of the property, a fact well known to the family, as they sought permission from Rema from time to time to build on, or occupy a portion of the property. She said that she sought Rema's permission to build her property on lot 11 and Barry sought Rema's permission to build a slaughter house and a barber shop on lot 12. She stated that Gloria also asked Rema's permission to come on to the property after the bank sold her house in Mango Valley. She stated that Gilda was put to live on the property with Rema's children and that Gilda remained there until her death in 2009. Rema's children later migrated. She stated that she later moved onto the property with her children. Further, that Rema was living in the United States when she acquired the properties and when she visited Jamaica, would stay in Stewart Town and later in Boscobel and never stayed at the property.

[19] She also stated that Gloria has never worked and has never bought any property. She supported Joy's evidence as to the circumstances of the transfer of the property to the claimants. She claimed that Steve had threatened Rema and he had also threatened her in 2018.

[20] Carlena gave evidence that Steve has never lived on the property and he was never raised on the land by Gloria. She stated that Steve caused a building to be erected on the spot that Rema had permitted Barry to build a barber shop. Further, that Rema even tried to evict Steve before the properties were given to the claimants as she did not want him there. She said that Steve was living in the United Kingdom when the building was put up. Further, that the building was erected after 2007. Rupert Henry, she said, supervised the construction of the

building and on its completion, rented the shops and collected rent, therefore she said Rema caused the notice to quit to be served on him.

[21] Carlena also gave evidence that Steve was deported to Jamaica in 2017 also, that Steve was not in Jamaica for more than a decade before he was deported. She denied threatening, abusing or assaulting any of Steve's tenants. She said the tenants left because a notice to quit was served on Steve.

Phillipa Green

[22] Phillip Green swore to an affidavit on behalf of her mother Rema Green whom she says is 87-years-old, resides in a senior living facility in New York and is unable to give a witness statement due to visitation restrictions imposed as a consequence of Covid-19.

[23] Phillipa said that she is fully able to give a statement in relation to the matter as she is familiar with the parties and the properties. Further, that she was present during certain developments concerning the properties, as from 2001 to 2014, her mother resided with her.

[24] Phillipa also stated is that she lived on the properties as a child until she and her siblings migrated to the USA at different periods between 1972 and 1977, and that Steve did not live on the property at any time while she lived there. Further, that her mother migrated to the USA in the late 1960's and has never lived in Mango Valley.

[25] She further stated that her mother never gave Steve permission to build on the properties and that her mother is not very close to Steve. She also stated that Barry was given permission to build a barber shop on the properties. However, he was unable to complete the shop and Steve built on the foundation for the unfinished barber shop. Barry gave similar evidence.

[26] It was Phillipa's evidence that when her mother learned that Steve was building on the foundation erected by Barry, her mother called Norma, Steve's mother in her presence and hearing to tell Steve not to build anything on her property because he did not have her permission to be there. She said they were unable to call Steve directly because they never had contact with him.

[27] According to Phillipa, a few weeks later, Steve called Rema and asked why he could not be on the property and Rema informed him that he had no permission to be there. Phillipa stated that Steve refused to leave and said that they could not stop him from building and threatened her. Phillipa further stated that Steve continued to build on the property without permission and they engaged a lawyer in Jamaica to serve a notice to quit. She stated further that Steve was living in England at this time, therefore, the notice to quit was served on his agent Rupert Henry who was managing the property for him. She further stated that after Steve was deported to Jamaica, he continued to build on the property without Rema's permission.

[28] She highlighted that when the properties were up for sale by the CIBC bank, Rema was unable to come to Jamaica to resolve the issue as she was scared based on the things Steve said to her. She reiterated the circumstances as stated by the claimants as to how the property came to be transferred to the claimants.

[29] Additionally, Phillipa gave evidence that when Gloria and her husband lost their home in Mango Valley, Rema gave them permission to live on a portion of the property. She also stated that they are not objecting to the orders sought in the Fixed Date Claim Form.

[30] In relation to Rema's mental capacity, Phillipa gave evidence that Rema was transferred from the hospital to the Linden Center for Nursing and Rehabilitation after she suffered a stroke and had restrictions to her left arm. She stated that prior to the onset of Covid-19, she visited Rema three time or more per week at the Linden Center where she resides. Also, that she speaks to Rema on a regular

basis. Therefore, she said she can definitively say that Rema had her full mental capacity at the time of the transfers. Phillipa stated further, that she was present when Rema signed the letter dated December 8, 2017 addressed to her attorney-at-law in Jamaica, agreeing to transfer lots 11, 12 and 13 to the claimants. She stated that her sister Marcia Green was also present. She further stated that she heard when the notary public read the letter to her mother and asked her several questions to ensure that she understood the document and that she agreed to transfer the properties to the claimants. She further informed the court that they discussed the transfer as a family before Rema signed the letter in the presence of the notary public.

[31] Phillipa also stated that she was present when Rema signed the actual transfer document that was sent by the attorney-at-law. Further, that she arranged for the notary public to be present and the notary public read the document to Rema, and asked her several questions to ensure that she understood and agreed that she would be transferring her property to the claimants.

[32] Phillipa's further evidence is that it was during the lockdown after March 2020 that she realised that Rema was forgetting certain things. She states that Rema now has early onset dementia which she says is not full blown. Further, Rema is able to communicate at times.

[33] Phillipa informed the court that to her knowledge, her mother has had no dealings with Natalee and she is unaware of Natalee ever asking Rema for permission to do improvement to her land.

[34] Phillipa said further, that she has never heard Gloria make any claims to the lands in Mango Valley. Gloria has never paid property tax. This, she said, was paid by Rema, or by Rema's children. She stated that she has sent money to Barry and he paid the property taxes until Joy and Carlena took over.

Mellody Medwinter

[35] Mellody said she moved onto the property with her mother and siblings in 1980 when she was about 14 years old and lived with her grandma Gilda until 2000. Mellody also deposed that neither Natalee nor Steve lived with Gilda when she was there. She stated that Natalee lived with Gloria who raised her on a different property in Mango Walk. She recalled that the only time Steve lived with Gloria at Mango Valley was at Gloria's husband's house beside the playing field.

[36] Mellody supported Carlena's evidence that Gloria and Kemar only moved onto Rema's land in the 1990s when Gloria's husband lost his house to the bank and got permission from Rema to build a little house on her land. She stated that Steve did not move with Gloria to the disputed property as he was a big man by this time so he was on his own. She said he later migrated to the United Kingdom.

[37] Additionally, Mellody deposed that when she migrated in 2002, Gloria's house was in the same incomplete state that Alfred Aarons died and left it. She further stated that Gloria did not work so she could not take the house any further. She stated that it had no ceiling but only lumber which the zinc was nailed to. She also said that there was no tile on the floor but only concrete and red oak mixed together. According to Mellody, Natalee did not have any money in those days to fix up the house. She also stated that there was no plaza there when she migrated in 2002.

[38] Mellody's evidence is also that it was not until after the disputed property was released from the bank and Natalee had migrated that she saw work being done on Gloria's house. Mellody said that she returns to Jamaica yearly and in late 2018/early 2019, she saw the building material. Mellody also gave evidence that she used to visit Gloria on each visit to Jamaica and there was no caregiver there. She said Gloria took care of herself. Mellody like Joy, recalled that in 2014, she realised that Gloria had dementia. Mellody said that she last spoke to Rema in April 2021 and that Rema spoke with clarity.

Barry Rattigan

[39] Barry gave evidence that he lived in a two-room structure on the property with his mother Gilda Hurst until about 1972 when he moved to Kingston to work. He later migrated to the United States of America but returned permanently to Jamaica in 2004. He stated that he moved back to the two-bedroom structure at the Mango Valley property and that it was in 2007 that he asked Rema for permission to build a barber shop on lot 12. He said he was permitted to do so, however, he was only able to complete the foundation.

[40] He gave further evidence that in 2008, Steve called him from England and asked him if he could finish the building and he told Steve that he did not own the property and he needed to get permission from Rema. He said thereafter he noticed the building started to go up under Rupert Henry's supervision and that Rupert later rented the shops. He highlighted that Steve was not in Jamaica at this time.

[41] Barry gave further evidence that when Gilda Hurst died in 2009, Rema came down from the United States of America for the funeral and asked who gave Steve permission to build on her property. He also said he was told by Rema that she did not give Steve permission to build on her land. Further, that on her return to the USA, Rema had a discussion with Steve about the land and he told her a lot of expletives.

[42] Barry's additional evidence was that he managed the Mango Valley property for Rema and that she gave him a Power of Attorney and sent down a form of 60 days' Notice to get Steve off her property. He said he signed a notice and gave to a bailiff to serve on Rupert who was handling the construction. Barry stated that Rupert continued to work on the building so he went to see an attorney-at-law who prepared another notice dated October 10, 2015, on his instructions and arranged for it to be served. He said that Steve was in jail in the United Kingdom at this time.

[43] He pointed out that he still lives in the old house on the property and that he operates a slaughter house that Rema gave him permission to build. He says the slaughter house is located on the same lot as the building that Steve erected.

DEFENDANTS/ANCILLARY CLAIMANTS' CASE

Steve Sterling

[44] In his first affidavit, Steve deposed that he was raised on the disputed property by his aunt, Gloria Rattigan and that he lived there for his entire childhood until he migrated to the United Kingdom in 1997. He stated that he believed Gloria to be the builder and owner of the house on the disputed property. The land, he said, was purchased in the 1970s and was equally owned by both Gloria and her sister Rema. He stated that he later learnt following consultations with his attorney-at-law, that Gloria was never a registered owner of the property. Furthermore, Steve said he only became aware that the claimants were registered as owners of the property when the claim was served on him.

[45] His evidence contrary to that of the claimants was that during the 1980s, when Rema visited Jamaica, she stayed at a dwelling house she built on a portion of the disputed property when she visited. Steve later withdrew this assertion in a later affidavit. He said Rema's house is located directly across from the house Gloria built and a small dirt track separates both houses. He stated that Rema later moved to another property which she bought in Boscobel, St Mary and her house on the disputed property was taken over by Barry.

[46] Steve gave further evidence that from 2001 until about 2018, he received an approximate monthly income of ninety-five thousand dollars ($95,000) from the combined rent of each tenant. However, he said from late 2018 until 2019 his tenants were verbally abused and threatened by Carlena and various family members which resulted in all the tenants but one vacating the premises. He said his remaining tenant only has access to the premises once weekly because of

Carlena's continuous abuse. Steve expressed that Carlena's abusive behaviour has prevented him collecting rent from the tenants at the premises.

[47] Steve further stated that in reliance on the assurances given to him by Rema he incurred significant expense in constructing the commercial building. Additionally, that his business has been in operation for over 18 years and neither Gloria nor Rema has ever made any attempt to interfere with or challenge his possession of the said land. Also, there was ample opportunity for them to object to the construction of the building. He stated that no other notice to quit other than the notice to quit dated June 6, 2018 was served on him.

[48] At the time of this claim, he said the land is occupied by 5 separate buildings. Specifically, Gloria's house, Rema's house, Carlena's house, his business and Barry's slaughter house.

[49] In his final affidavit filed February 15, 2022, Steve stated that in 1999 Gloria gave him permission to build the plaza on lot 12. Also, that Gloria always said she wanted him to be comfortable and to set up business on her land whenever he returned from the United Kingdom. Also, that Gloria said that the house was for Natalee. He stated that there was never any interference from anyone until Carlena came to the property in 2017 to build and in 2018 when he was served with a notice to quit.

[50] He disclosed that he was close to Rema up until he finished the construction and for a period after. He said Rema even called him and complimented him on the plaza. However, he stated that they grew apart because he refused to give Carlena one of the shops on the plaza for free. Steve said that when he spoke to Rema about his plan to build the plaza, he did not know that she had title to the land. He said he sought her approval as a matter of respect.

Kemar Kelly

[51] According to Kemar, he has lived at the disputed property since his childhood along with Gloria, her husband, Natalee and Steve. Further, that he and Gloria are the sole remaining occupants of the house and he is her principal caregiver. He expressed that at no time has Gloria required him to vacate the disputed property and that he makes no claim to an interest in the disputed property that is greater than Gloria's. He says that he is Gloria's licensee.

[52] In his affidavit in support of Notice of Application for Court Orders for Consolidation of Matters, Kemar stated that he lived in Gloria's house from the age of 10 and that he started to live with her around 1999. He said that until a notice to quit was served on him, he was unaware of a registered title for the lands. He said that up to that time he knew of three lots that were regarded as jointly purchased by Rema and Gloria, with Gloria controlling lots 12 and 13 and Rema controlling lot 11. He stated that Gloria gave permission to Barry to construct a slaughter house and shed in 2012 on a portion of lot 13 that is considered family land.

[53] Kemar stated that he has personal knowledge that Gloria authorized Steve to build a plaza on lot 13 in 1999, and there was never any interference from anyone until Carlena came and erected her house in 2017.

[54] He also said that he has personal knowledge that up to the time of the service of the notice to quit, Rema did not interfere with Gloria's occupation of lots 12 and 13 and Gloria did the same with Rema on lot 11. He said his understanding was that they made joint decisions concerning the lands and if they were to be divided Rema would be sole owner of lot 11 and Gloria sole owner of lots 12 and 13, except for the portion considered as family land.

Steve Sterling and Natalee Silvera's joint affidavit

[55] In their affidavit in response to Joy's December 20, 2021 affidavit, the ancillary claimants deponed that Gloria's home is located on lot 12 and she has always owned and controlled it. Further, that lot 12 houses Barry's slaughter house and Gilda's grave and lot 13 houses a small shed used by Barry to skin animals.

[56] Steve and Natalee further deponed that Gloria and her common law husband Alfred Aarons built a home on lot 12. Further they stated that they were raised by Gloria on lot 12 and 13 which Gloria treated as one property. Natalee said she spent the majority of her childhood on the disputed property until she migrated to the United States in 2017.

[57] Additionally, they informed the court that up to 2018, the disputed property was to them one big piece of land and Gloria and Rema controlled their separate part. They said the parts controlled by Gloria are what they now know as lots 12 and 13 specifically. They stated that Natalee built a living room and indoor kitchen on the two bedrooms and bathroom build on lot 12 by Gloria and Alfred Aarons.

[58] Natalee gave evidence that since her adult life she has been steadily improving the original home built by Gloria and Alfred Aarons on lot 12. She further stated that since the age of 27, she started making improvements to the said home on lot 11 (sic) with money she saved working as a clerk at a jewellery store. She stated that she bought the first 600 blocks, installed various fixtures including wash basin, bath, toilet bowls and completed the tiling and the installation of bathroom doors. Also, that she removed the zinc roof and decked the entire roof in or around 2018. Natalee further stated that she sent money from the United States to maintain the yard and pay Gloria's caregiver and that for the last five years, she has been the one taking care of Gloria. Natalee stated further in her evidence that the ancillary claimants do not know how the home on lot 12 is maintained neither have they contributed to the maintenance of the disputed property.

[59] The ancillary claimants exhibited a valuation report dated 8th May 2021 prepared by Oliver's Property Services in respect of the disputed property which shows the market value of the plaza as ten million dollars ($10,000,000) and market value of the renovated and expanded house as five million dollars ($5,000,0000).

[60] They said that since Natalee migrated to the United States, her clothing and personal items have always remained at the home on lot 12 so she regards herself as still being in occupation.

[61] Further they gave evidence that there was no objection from anyone including Rema when Steve re-entered lot 12 as an adult and built his plaza. They claimed that Steve has always maintained control of the plaza and his agents were building on his behalf. Further, that during his construction there is no evidence that anyone disturbed his occupation and there was never any cease and desist letter issued to him. The ancillary claimants stated that the claimants are not the competent authority that handles building approvals and any reference to Steve's plaza as illegal is self-serving.

[62] The ancillary claimants dispute Barry's affidavit evidence that he lived on lot 11 with Gilda. The ancillary claimants stated that Gloria told Steve that the land is for him and Natalee and that he could go ahead and do what he wanted to. It was their evidence that Steve had a great relationship with Rema privately.

[63] The ancillary claimants denied that Barry made any foundation on the properties. They stated that Barry and Steve never spoke until Steve came to Jamaica. Also, that Steve did not build his plaza on any foundation commenced by Barry or anyone else. It was also denied that Rupert was the supervisor of the construction of the plaza. This fact was however admitted by Steve in cross examination. They stated that Rupert only collected money sent by Steve through Western Union to pay workers including Christopher Sterling who was the supervisor.

[64] In response, to Carlena's affidavit, the ancillary claimants said that they do not recall seeing Carlena on the property when they were growing up there and that

she migrated before 1990. They also stated that Steve always visited Jamaica prior to being incarcerated, that he visited Jamaica in 2000 after the plaza was completed and supervised the work on his plaza until his return in 2017.

[65] Natalee in her final affidavit filed March 4, 2022, said that up to 2018, she did not know that there was a registered title for the lots 11, 12 and 13. She only knew that they were purchased by Gloria and Rema. She stated further that Kemar Kelly would fill in as Gloria's caregiver when the caregivers whom she paid left. She also stated that she personally paid the property taxes between 2010 and 2015. According to Natalee, it was not her understanding that there was a title separate from the tax roll number that they used to locate the land at the tax office as she did not need a title to pay the taxes.

Kevon Kelly

[66] In his affidavit, Kevon stated that he lived on lot 12 with his mother Natalee and Gloria before he migrated to the United States of America in 2014. He stated that up to 2018, he did not know that there was a registered title for lots 11, 12 and 13. However he said that he knew that Gloria acquired property with Rema and that Rema controlled lot 11 and Gloria controlled lots 12 and 13 except the area with Barry's slaughter house and Gilda's grave.

[67] Contrary to Steve's initial assertion, Kevon deponed that since the purchase of the lands in the 1970s, Rema has not constructed any house on lot 11. Rather, he said the house that existed on lot 11 at the time of the purchase became home to Gloria and Gilda until her passing. He further stated that when Rema visited Jamaica, the taxi would leave her at her home in Boscobel, St Mary and this is where he and other family members would visit her.

[68] Further that it was just Gloria and her husband who constructed a home on lot 12 and lived there from approximately 1975 to present. He gave evidence that he heard Gloria say that Rema did the paper work for the purchase of the properties

and that no one can trouble Natalee and whatever she has in Jamaica belongs to Natalee and Steve.

Norma Rattigan

[69] Norma deposed that she migrated to the United States of America in or around 1993. She also deposed that lot 12 has been Gloria's home since the 1970s. Further that she has personal knowledge that Gloria made substantial contribution to the purchase price. Norma gave evidence that she journeyed with Gloria to the Bank of Nova Scotia in Oracabessa, St Mary where she kept her money and watched her withdraw 1200 pounds. She said that Gloria took the money to Rema. Norma also said that she was present when they had discussions that the balance of the purchase price was to be secured by mortgage with the Middlesex Building Society of Jamaica.

[70] She gave further evidence that Rema and Gloria jointly made mortgage payments to the Middlesex Building Society for a number of years and that Gloria would hand sums of money from her savings to Rema for that purpose or she would take the payments directly to the Middlesex Building Society. When Gloria made payments at the bank Norma said she accompanied her. It was Norma's further evidence that taxes were handled in much the same way. She said Gloria would sometimes pay and Rema would sometimes pay.

[71] Norma stated that after the purchase of the lots, Gloria and Rema acted jointly to have a private road cut through the lands. Furthermore, she said, Rema controlled lot 11 and Gloria controlled lots 12 and 13 with the road separating lot 11 from lots 12 and 13. Further, that Gloria and her husband constructed a house on lot 12 and up to 2018 has had exclusive and uncontested control over the disputed property except for Barry's slaughter house and shed on lot 12 and Gilda's grave on lot 13. She informed the court that the dwelling house which existed on lot 11 at the time of the purchase became home to Gilda. Also, that by 1975, Rema was already living in the United States. On Rema's return to Jamaica, Norma said she would

stay at her house in Boscobel, St Mary and this is where family members would visit her.

[72] Norma recalled that Gloria said that Rema did all the paper work for the purchase of the properties. She too asserted that that Gloria said that whatever she has in Jamaica is for Natalee and Steve.

LAW

RECOVERY OF POSSESSION

[73] In examining the rights of a registered proprietor of land, it may be apt to begin with the provisions of the Registration of Titles Act (RTA). Sections, 68, 70 and 71 are relevant. Section 68 provides as follows**:**

> ***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.***

[74] "Section 70 is to the following effect:

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

> ***certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser. …"***

[75] Section 71 of the Act provides as follows:

> ***Except in the case of fraud no person contracting or dealing with, or taking or proposing to take, a transfer from the proprietor of any registered land, lease, mortgage or charge shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding and the knowledge that any such trust of unregistered interest is in existence shall not of itself be imputed as fraud.***

[76] Certain aspects of the discussion in **Pottinger v Raffone** [2007] UKPC 22, may also be relevant in the present case. The Judicial Committee of the Privy Council in looking at section 161 of the RTA reproduced the relevant aspects of that section at paragraph 20 of the judgment. That section reads as follows:

> "***No action of ejectment or other action, suit or proceeding, for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say–***
>
> > ***(a) the case of a mortagee as against a mortgagor in default;***
> >
> > ***(b) the case of an annuitant as against a grantor in default;***
> >
> > ***(c) the case of a lessor as against a lessee in default;***
> >
> > ***(d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;***
> >
> > ***(e) the case of a person deprived of or claiming any land included in any certificate of title of other land by misdescription of such other land, or of its boundaries, as against the registered proprietor of such other land not being a transferee thereof bona fide for value;***

> ***(f) the case of a registered proprietor with an absolute title claiming under a certificate of title prior in date of registration under the provisions of this Act, in any case in which two or more certificates of title or a certificate of title may be registered under the provisions of this Act in respect of the same land, and in any other case than as aforesaid the production of the certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described any rule of law or equity to the contrary notwithstanding."***

[77] The court thereafter made the following pronouncement:

> ***"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 paragraphs (a) to (f). For present purposes the only relevant paragraph is (d), proceedings by a person deprived of any land by fraud against the person registered as proprietor of land through fraud. Therefore, assuming in Ms Raffone's favour that she could claim to have been deprived of the 34 lots, Mr Pottinger's certificate of title would not be a bar to her proceedings if, but only if, she could show that she had lost the land because Mr Pottinger had been registered as proprietor of it through fraud.***

[78] In the case of **George Mobray v Andrew Joel Williams**, JMCA [2012 Civ 26, Harris JA made the following observations with regard to those provisions:

> ***In*** *Gardener and Anor v Lewis****, Lord Browne-Wilkinson, in dealing with the effect of the foregoing provisions had this to say at page 4:***
>
> > ***"From these provisions it is clear that as to the legal estate the Certificate of Registration gives to the appellants an absolute title incapable of being challenged on the grounds that someone else has a title paramount to their registered title. The appellants' legal title can only be challenged on the grounds of fraud or prior registered title or, in certain circumstances, on the grounds that land has been included in the title because of a 'wrong description of parcels or boundaries': section 70."***
>
> ***[16] He went on to state that the provisions are with reference to legal title to land only and that although the title is decisive as to legal interest, this does not preclude personal claims being enforced***

> ***against the registered proprietor. In this regard, he cited the following extract from Frazer v Walker where at page 585 Lord Wilberforce said: "***
>
> > ***… their Lordships have accepted the general principle that registration under the Land Transfer Act, 1952, confers upon a registered proprietor a title to the interest in respect of which he is registered which is (under sections 62 and 63) immune from adverse claims, other than those specifically excepted. In doing so they wish to make clear that this principle in no way denies the right of a plaintiff to bring against a registered proprietor a claim in personam, founded in law or in equity, for such relief as a court acting in personam may grant. That this is so has frequently, and rightly, been recognised in the courts of New Zealand and of Australia: see, for example,*** *Boyd v. Mayor, Etc., of Wellington* ***[1924] N.Z.L.R. 1174, 1223 and*** *Tataurangi Tairuakena v. Mua Carr* ***[1927] N.Z.L.R. 688, 702.***
>
> ***[17] As can be distilled from the foregoing, a registered title is immune from challenge except on the ground of fraud. Despite the provisions in the Registration of Titles Act relating to indefeasibility, a defendant in an action for recovery of possession may raise an issue as to a claim in personam. However, a defendant may only do so if any of the following factors presents itself:***
>
> > ***1. that he has an unregistered equitable interest in the land by virtue of which the claimant is estopped from denying such interest; or***
> >
> > ***2. that the certificate of title was fraudulently obtained; or***
> >
> > ***3. that subsequent to the issue of the title he acquired adverse possession of the land.***

[79] In summary, the relevant provisions of the RTA confer upon the holder of a registered title to land, an indefeasible interest in such land, such interest capable of being defeated by fraud, by someone claiming under a certificate of title earlier in date of registration under the said Act, where land is included in the certificate by misdescription or by virtue of the operation of a statute of limitation. Based on case law, it has also been demonstrated that such title holder may be subject to a claim in personam where an individual has an unregistered equitable interest in the land by virtue of an estoppel.

PROPRIETARY ESTOPPEL

[80] In the case of **Annie Lopez v Dawkins Brown and Glen Brown** [2015 JMCA Civ 6, Morrison P gave a very detailed exposition of the law of proprietary estoppel. At paragraph 66 to 73 of the judgment he expressed the following:

> ***"66 ...We were also referred by Miss McBean to the decision of the Court of Appeal of England in Crabb v Arun District Council, a case involving a claim to a right of access over land to a public highway.***
>
> ***'In that case, Lord Denning MR said this (at page 871):***
>
> > ***"When counsel for Mr Crabb said that he put his case on an estoppel, it shook me a little, because it is commonly supposed that estoppel is not itself a cause of action. But that is because there are estoppels and estoppels. Some do give rise to a cause of action. Some do not. In the species of estoppel called proprietary estoppel, it does give rise to a cause of action...What then are the dealings which will preclude [a landowner] from insisting on his strict legal rights? If he makes a binding contract that he will not insist on the strict legal position, a court of equity will hold him to his contract. Short of a binding contract, if he makes a promise that he will not insist on his strict legal rights—even though that promise may be unenforceable in point of law for want of consideration or want of writing—and if he makes the promise knowing or intending that the other will act on it, and he does act on it, then again a court of equity will not allow him to go back on that promise...Short of an actual promise, if he, by his words or conduct, so behaves as to lead another to believe that he will not insist on his strict legal rights—knowing or intending that the other will act on that belief—and he does so act, that again will raise an equity in favour of the other, and it is for a court of equity to say in what way the equity may be satisfied.***
>
> ***The cases show that this equity does not depend on agreement but on words or conduct. In Ramsden v Dyson [(1866) LR 1 HL 129 at 170)] Lord Kingsdown spoke of a verbal agreement 'or what amounts to the same thing, an expectation, created or encouraged'."***

[81] At paragraph 67, Morrison P highlighted Lord Scarman's discourse on the law:

> ***[67] In similar vein, Scarman LJ added the following (at page 875):***
>
> ***"The plaintiff and the defendants are adjoining landowners. The plaintiff asserts that he has a right of way over the defendants' land***

> ***giving access from his land to the public highway. Without this access his land is in fact landlocked, but, for reasons which clearly appear from the narration of the facts already given by Lord Denning MR and Lawton LJ, the plaintiff cannot claim a right of way by necessity. The plaintiff has no grant. He has the benefit of no enforceable contract. He has no prescriptive right. His case has to be that the defendants are estopped by their conduct from denying him a right of access over their land to the public highway. If the plaintiff has any right, it is an equity arising out of the conduct and relationship of the parties. In such a case I think it is now well-settled law that the court, having analysed and assessed the conduct and relationship of the parties, has to answer three questions. First, is there an equity established? Secondly, what is the extent of the equity, if one is established? And, thirdly, what is the relief appropriate to satisfy the equity?"***

[82] At paragraph 68, he called attention to a summary of the relevant law in a noted text:

> ***[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."***

[83] Morrison P warned about placing too great an emphasis on the notion of unconscionability:

> ***[69] As will be seen, the notion of unconscionability of some kind is central to this and other formulations of the principle. However, Lord Scott's important judgment in Yeoman's Row Management Ltd and another v Cobbe, to which Mr Williams referred us, sounds an important caution (at para. 16) against allowing unconscionability to take on a life of its own:***

> ***"My Lords, unconscionability of conduct may well lead to a remedy but, in my opinion, proprietary estoppel cannot be the route to it unless the ingredients for a proprietary estoppel are present. These ingredients should include, in principle, a proprietary claim made by a claimant and an answer to that claim based on some fact, or some point of mixed fact and law, that the person against whom the claim is made can be estopped from asserting. To treat a 'proprietary estoppel equity' as requiring neither a proprietary claim by the claimant nor an estoppel against the defendant but simply unconscionable behaviour is, in my respectful opinion, a recipe for confusion."***

[84] The need for clarity when relying on an estoppel was reiterated in the following paragraph:

> ***[70] Further, Lord Scott continued (at para. 28):***
>
> > ***"Proprietary estoppel requires, in my opinion, clarity as to what it is that the object of the estoppel is to be estopped from denying, or asserting, and clarity as to the interest in the property in question that that denial, or assertion, would otherwise defeat. If these requirements are not recognised, proprietary estoppel will lose contact with its roots and risk becoming unprincipled and therefore unpredictable, if it has not alas to what ready become so."***

[85] At paragraph 71 to 73, the observation was made that where an estoppel is relied on, the particular facts of the case are always important and where there is an agreement, regard should be had to its terms, but where there is none, the critical starting point must be firstly whether there was a representation followed by the other two requirements:

> ***[71] Attorney-General of Hong Kong and another v Humphreys Estate (Queen's Gardens) Ltd [1987] 2 All ER 387, to which Mr Williams also referred us, also makes it clear that it is important in every case in which a claim based on proprietary estoppel is made to have regard to the particular facts of the case. In that case, a written agreement, expressed to be "subject to contract", for the purchase of development property had been signed. The agreement stated that the terms could be varied or withdrawn and that any agreement was subject to the documents necessary to give legal effect to the transaction being executed and registered. It was therefore clear that neither party was for the time being legally bound. However, the intended purchaser was permitted to take possession of the property and to spend money on it. Subsequently, the owners of the property***

> ***decided to withdraw from the transaction and gave notice terminating the intended purchaser's licence to occupy the property.***
>
> ***[72] The intended purchaser's claim to the property based on proprietary estoppel failed because, given the terms of the agreement between the parties, it had chosen "to begin and elected to continue on terms that either party might suffer a change of mind and withdraw" (per Lord Templeman, delivering the judgment of the Privy Council, at page 395). As Lord Scott later explained (at para. 25) in Yeoman's Row Management Ltd and another v Cobbe, "[t]he reason why, in a 'subject to contract' case, a proprietary estoppel cannot ordinarily arise is that the would-be purchaser's expectation of acquiring an interest in the property in question is subject to a contingency that is entirely under the control of the other party to the negotiations...The expectation is therefore speculative" (see also the earlier case of*** *Gillett v Holt* ***[2001] Ch 210, 228, where Robert Walker LJ described*** *Attorney General of Hong Kong v Humphreys Estate (Queen's Gardens) Ltd* ***as "essentially an example of a purchaser taking the risk, with his eyes open, of going into possession and spending money while his purchase remains expressly subject to contract").***
>
> ***[73] Although proprietary estoppel is not based on contract, it is therefore always necessary to have regard to the nature and terms of any agreement between the parties. In the absence of agreement, the important starting point must be, firstly, whether there has been a representation (or assurance) by the landowner, capable of giving rise to an expectation that is not speculative, that she will not insist on her strict legal rights. Secondly, there must be evidence of reliance on the representation (or change of position on the strength of it) by the person claiming the equity. And, thirdly, some resultant detriment (or disadvantage) to that person arising from the unconscionable withdrawal of the representation by the landowner must be shown. But unconscionability, standing by itself, without the precedent elements of an estoppel, will not give rise to a cause of action.***

[86] In the first instance decision in **Annie Lopez**, Campbell J had found that certain acts on the part of the appellant amounted to acquiescence. His reasoning is reflected at paragraph 79 of the judgment of the Court of Appeal. He said:

> ***"The instances [sic] of not acting when men were observed by the defendant surveying the property, constitutes an acquiescence, a remaining silent, an abstaining from an assertion of rights which inured to the detriment of the claimants. I hold that it would be unconscionable and unjust to allow the defendant to set up her undoubted rights against the claim being made by the claimants. (See Crabb v Arun, Scarman L.J. page 195 letter E). There is no denial that the claimant[s] incurred large expenses in respect of the property."***

The Court of Appeal endorsed Campbell J's reasoning.

LAW ON ADVERSE POSSESSION

[87] It may by now be regarded as trite law that the combined effect of sections 3 and 30 of the Limitation of Actions Act operates to extinguish title of a proprietor of land, whether registered or unregistered. Such a proprietor may lose his right to bring an action to recover possession of land by virtue of the operation of these sections, if an individual who has no title to the land has been in open, continuous undisturbed and exclusive possession for a period of twelve years or more without the consent of the title owner. For example, see the case of **Recreational Holdings 1 (Jamaica Limited (Appellant) v Lazarus (Respondent)** (Jamaica-2016 UKPC 22). Following on the maxim he who asserts must prove, the onus is on the person who claims that he or she has dispossessed the title owner, to prove same. See **Powell v McFarlane** 38 P & CR 452. It is also the undisputed position in law that where an individual enters into possession of land with the consent of the paper title holder, or by some license, then possession is not adverse. See **Pye v Graham** [2002] UKHL 30, **Buckingham County Council v Moran** [1989] 2 All ER 225, **Bryan Clarke v Alton Swaby** [2007] UKPC 1. Time will not begin to run until there has been a revocation of the permission or determination of the license. **Ramnarace v Lutchman** [2001] 1 W LR 1651, 1654.

[88] Even if the circumstances are such that the paper title owner has remained off the land and not made an entry for a period of 12 years or more, once the person claiming to be in open, continuous, exclusive and undisturbed possession had entered with the permission of the title holder and such permission had not been revoked, time does not begin to run. **Seaton Campbell v Donna Rose-Brown** 2016 JMCA 105. This is the common law position and there has been no statutory intervention in this regard. This court recognizes that one may claim exclusive, open, undisturbed possession of a portion of a property as evidenced by the decision in **Perry v Baugh, Wilson et al** [2018] JMCA Civ.12, where Brooks JA found that squatters in occupation of various different sections of a parcel of land

at the same time that the title owner was in possession of a different section, had acquired the right to possessory title in respect of the portion of land occupied by each of them so that the paper title holder's claim for recovery of possession failed.

[89] In **Lois Hawkins v Lynette Hawkins** [2016] JMSC Civ 14 Sykes J postulated four criteria which must be met before a claim for the acquisition of a possessory title can be established. He stated that there must be

1. Peaceful, open, undisturbed and exclusive (sole) possession of the property for 12 continuous years,

2. The animus possessendi, that is, the intention to exclude and deny the title of the paper owner and the world,

3. The acts of the dispossessor in relation to the property, should be incompatible or inconsistent with the due recognition of the paper title owner. Therefore, a person claiming to be in possession with the permission of the paper title owner, cannot maintain that the owner has been dispossessed by him.

4. The abandonment or discontinuance of possession by the paper owner.

THE CLAIMANTS STATUS

Claimants/ancillary defendants' submissions

[90] It was Miss Minto's submission in closing, that the first and second claimants are now the registered proprietors of the disputed property and therefore have the right in law to immediate possession of the land. She relied on **Powell v McFarlane** (1977) 38 P&CR 452. Further, counsel relied on section 68 of the RTA and submitted that the unimpeachable right of the registered owner is subject only to the operation of the statute of limitations and fraud.

[91] Counsel advanced that the court should accept Phillipa's evidence in relation to the transfer as she gave her first affidavit before the ancillary claim was filed and therefore has nothing to gain from her evidence that the transfers were valid. Furthermore, she had nothing to gain by participating in the attestation of the written gift, since her mother was giving away lands, that she could have inherited. On the other hand, counsel asked the court to reject Kevon's evidence as he has much to gain from his testimony as his brother stands to be evicted and his mother stands to lose on her alleged improvements to the house.

[92] Further, counsel argued that the ancillary claimants have not satisfied the legal requirements to invalidate the transfer to the claimant. Firstly, counsel highlighted that there is no plea as to fraud before the court and on the authority of **Wallingford v The Directors; etc of the Mutual Society** (1880) 5 App Cas 685, fraud has to be pleaded and particularised; insinuations as to fraud is not sufficient. She argued that the transfer could only be impugned by establishing fraud. In the absence of fraud, she submitted, an absolute interest in land has become vested in the claimants. Secondly, counsel submitted in reliance on **Imperial Loan Co Ltd** [1892] 1 QB 599 that a person who is not mentally capable of effecting a transfer, will nevertheless be bound by its terms; unless she can prove at the time the transfer was effected, that the beneficiary had either actual or constructive notice of her incapacity. She observed that the burden of proof in such a case lie squarely on the party alleging that the transferor did not possess the relevant mental capacity.

[93] Miss Minto made the point that a person receiving registered land is not required to look behind the title. She maintained that even if there is notice or actual knowledge of a potential equitable interest based on the existence of some house or building on the land which is occupied by someone other than the transferor, this would not affect the title of the transferee. She submitted that any rule or equity to the contrary, is ousted by the statutory provisions of section 71, the only exception being adverse possession.

[94] On behalf of the claimants Miss Minto also submitted that where an individual has been deprived of the use and/or possession of his property, damages are often awarded in the form of mesne profits. Counsel relied on **Bancroft Brown v Daveton Williams** [2016] JMSC 192 to support her argument that there is no evidence as to what the property could let for and asked that the claimants be paid $10,000 monthly from the date when the respective notices to quit expired.

Defendants/ancillary claimants' submissions

[95] Counsel submitted that the present registered owners hold the property on trust for the defendants/ancillary claimants except for the part where the slaughterhouse, shed and family graves are located as shown by Fitz Henry's diagram.

Analysis

[96] I reject the defendants'/ancillary claimants' assertion as stated by Kevon that Rema told him things that caused him to form the view that she did not knowingly transfer the property to the claimants Joy, Carlena and Alfred Theodor Tischer. According to Kevon, he visited Rema in 2018 at the Linden Centre for Nursing and Rehabilitation after learning of the transfer of the properties to the claimants. He stated that based on what she told him, he formed the view that she did not know that she had signed a document giving the claimants ownership of the disputed property.

[97] While I might have been reluctant to accept the affidavit evidence of Mrs Veroneeth McKenzie Morris as to the circumstances of the execution of the transfer to the claimants, I find it to be compelling. My unwillingness stems from the fact that she did not attend for cross examination. I find it to be compelling when juxtaposed against the evidence of Phillipa who was present in these proceedings via video link and who was cross examined. I consider that Phillipa and her siblings stood to lose their potential inheritance as a consequence of the transfer of the property and hence Phillipa had no reason to give evidence that is ultimately adverse to her

interest. Phillipa was quite clear that her mother executed the transfer in the presence of a Notary Public and that her mother was quite cognizant of the full effect of her conduct at the time of the execution.

[98] Notwithstanding the information contained in the affidavit from the Linden Center for Nursing and Rehabilitation to the effect that Rema has been admitted in that institution since 2014 and has a history of dementia, there is credible evidence which I accept which indicates that she had the necessary capacity at the time that the transfer of the property was made to the claimants. I make this finding bearing in mind the fact that the ancillary claimants put the claimants to strict proof that Rema possessed the necessary mental capacity at the time of the transfer.

[99] While I acknowledge that Phillipa has no medical expertise, I see no reason to doubt her knowledge as to her mother's mental state at the time of the execution of the transfer. Her evidence in one affidavit was that her mother lived with her from 2001 to 2014. She also said that her mother lived with her and one of her sisters between the years 2007 to 2014, when she suffered a stroke and was transferred to the Linden Medical Center after hospitalization. Further, that it was the restriction in movement to her arm and not any mental impairment that led to her confinement in the rehabilitation center. Phillipa was sufficiently familiar with her mother and hence her mother's mien, speech and general conduct so as to have been able to discern whether she was in a normal state of mind.

[100] In any event, I accept Miss Minto's submission that a person who is not mentally capable of effecting a transfer, will nevertheless be bound by its terms; unless it is proven that at the time the transfer was effected, the beneficiary had either actual or constructive notice of her incapacity. Thus even if as the ancillary claimants argue, Rema did not have the capacity to effect the transfer, it has not been established that that was information available to the ancillary defendants.

[101] The ancillary claimants have not pleaded fraud or placed any evidence before the court as to any fraud on the part of any of the claimants or ancillary defendants. It

is by now trite law that where reliance is placed on fraud, it must be pleaded and specifically proved. It is not enough that bare assertions are made. See **Linel Bent (Administrator of the estate of Ellen Bent deceased and Linel Bent Administrator of the estate of Elga Isaacs v Elenor Evans** C.L. 1993/B 115,

[102] There is no indication on the part of any of the ancillary claimants that they in any way relied on any assurance given by any of the claimants. The court having found that the land was properly transferred to the claimants, the question remains as to whether the claimants are bound by any right acquired in respect of the subject property. The court will examine the case in relation to each of the following persons in order to establish whether the claimants or their title to the disputed lands are subject to any rights acquired by them: Gloria Rattigan, Steve Sterling and Natalee Silvera. Although he is not claiming any rights in respect of the subject property, Kemar Kelly's status must also be looked at.

GLORIA RATTIGAN'S STATUS

[103] Although Gloria Rattigan is not a party to this claim, I am of the view that her status as far as the disputed land is concerned is central to the resolution of certain aspects of this claim. Therefore, consideration must be given to her status

Submissions of the claimants/ancillary defendants

[104] The claimants/ancillary defendants advert to the fact that Gloria is not a registered owner of the disputed land and contend that Gloria's presence on the land does not mean she is entitled to an equitable/beneficial interest, without more, as her presence is equally attributable to her being there with Rema's permission as her licensee. She argued that the claimants' registered title is indefeasible against Gloria.

[105] Miss Minto further submitted that the claim by the ancillary claimants/defendants that it was Gloria who built the house that she resides in is hotly disputed and contradicted by their own case. She pointed to Natalee's assertion that the house

was built by Alfred Aarons, and Kemar's assertion that it was built by Gloria and Rema. Nevertheless, counsel argued in reliance on **Blue Haven Enterprise Ltd v Tully** [2006] UKPC 17 and paragraph 44 of **Pearline Gibbs v Vincent Stewart** [2016] JMCA Civ 14 that in any event, a claim to beneficial interest in land based on voluntary expenditure on someone else's land, is not guaranteed to succeed, given the law that equity will not assist a volunteer and the well-established principle of quic quid plantatur solo, solo cedit- Whatever is attached to the land becomes part of it.

[106] Counsel submitted that the issue whether Gloria has any interest in lot 12 based on her occupation of the land will have to be properly ventilated before the court and there is no claim, no duly appointed representative of Gloria or any proper evidence before the court to facilitate same. According to counsel, all we have is hearsay evidence as to who built the house, Gloria's intention and her alleged acts and conduct.

Submissions of the defendants/ancillary claimants

[107] In relation to whether Gloria holds a beneficial interest in the properties by virtue of her contribution to the purchase price of the said properties, construction on same and remaining in possession with the consent, acquiescence and or encouragement of Rema and alternatively whether she acquired title by adverse possession, counsel for the defendants/ancillary claimants relies on Norma's evidence. Counsel asked the court to interpret Norma's contradictory evidence in cross examination that she had no knowledge of Rema taking out a mortgage to purchase the land and that Gloria went to the bank in Oracabessa and provided all the funds for the purchase as a misunderstanding on her part. She asked the court to interpret Norma's evidence under cross examination to mean that Gloria provided all the purchase money that was paid and that the balance was obtained by mortgage financing.

[108] Counsel further sought to persuade the court that the evidence of Natalee, Steve and Kevon is supportive of the contention and conclusion that Gloria holds a beneficial interest in lots 11, 12 and 13 or alternatively acquired title by adverse possession.

[109] Counsel asked the court not to allow the defendants/ancillary claimants' affidavit evidence that Gloria moved to live on lot 12 in or about 1970 or in the 1970's to undermine their credibility as it was a mistake on their part in light of Natalee's evidence in re-examination. Furthermore, the defendants/ancillary claimants' oral evidence is supported by the claimants and their witnesses as to when Gloria moved to lots 12 and 13.

[110] It was the further submission that Gloria's claim to a beneficial interest is not statute barred by the Limitations of Actions Act. To support this submission counsel pointed the court to the various assertions of Gloria's possession of lots 12 and 13 since the acquisition in the 1970's, having planted crops on lots 12 and 13 and later moving on to lot 12 and building a house thereon. Also, counsel relied on the doctrine of proprietary estoppel. She relies on the case of **Annie Lopez v Dawkins Brown and Glen Brown** [2015] JMCA Civ to say that estoppel may give rise to a cause of action in this case. She says further, that the estoppel arises by virtue of Gloria's contribution to the purchase, long undisturbed possession of the property and acquiescence of the registered proprietor and Gloria has been led to believe that she has an interest in properties at lots 12 and 13.

Analysis

[111] The evidence which I accept is that Gloria is presently incapacitated. This assertion has been made by both the claimants and the defendants/ancillary claimants. It is not entirely clear when she developed dementia. It is Joy's as well as Mellody's evidence that when Gloria was in New York in 2014 it became evident to them then, that she had dementia. It would also appear that Gloria's situation is not likely to change as she is now at least 89 years old.

[112] For the most part, I reject Norma's evidence. I found her to be an unreliable witness who was largely discredited during cross examination. For example, although she accepted that the premises at Ball Ground where May (Gloria) lived belonged to Gloria's husband Alfred Aarons and that Gloria was living at Ball Ground when she bought the land, she also stated that Gloria was living with Lloyd Mitchell whom she described as Gloria's husband when Gloria bought the land. She had earlier agreed that Gloria had never worked a day in her life up to the point she bought the land. She stated that it was Lloyd Mitchell's money that she used to buy the land. Other aspects of her evidence in cross examination contradicted her evidence in chief. In re-examination, she stated that Gloria moved onto the disputed lands when she built her house there in the 80s and 90s. In particular, she did not strike me as credible and sincere with regard to her evidence that Gloria provided the monies for the purchase of the disputed property.

[113] One of the issues which arise but which cannot properly be resolved in these claims is the question of whether Gloria holds a beneficial interest in the disputed property. An assertion has been made that she was a joint purchaser of the property but, that without Gloria's knowledge, Rema caused the property to be transferred in her name only. It has also been asserted that Gloria acquired a possessory title to the property by virtue of her open, continuous, exclusive and undisturbed possession of the property, albeit with the exception of certain stated portions. The argument also made in submissions is that by virtue of the principle of proprietary estoppel, she has acquired an interest in the disputed property. It is not entirely clear if the defendants/ancillary claimants are putting forward a third position or if the argument counsel makes is that based on her contribution to the purchase price, an estoppel operates in Gloria favour. It may immediately be observed that there are instances when the contentions which ground the ancillary claim are inconsistent with each other, although that is not always the case.

[114] There is irrefutable evidence as seen from the duplicate certificates of title in respect of all three parcels of land and endorsements thereon, that the parcels were purchased in Rema's name only. Thus she was prior to the transfer to the

claimants, the sole legal owner. The only admissible evidence that the property was jointly purchased by Rema and Gloria came from Norma. The 'say so' of Steve, Natalee and Kemar amount to no more than bare assertions. Fraud was never pleaded and no evidence was presented in that regard. There is not one scintilla of believable evidence that Rema perpetrated fraud on Gloria by jointly purchasing property with her, then causing the property to be transferred in Rema's name solely. The defendants' case that Gloria was a joint owner of the land with Rema by virtue of them making a joint purchase stand on very infirm grounds.

[115] Even if this court cannot make a firm finding that Gloria was not a joint purchaser (because of Gloria's absence as a party in these proceedings), on the basis that Rema is the sole legal owner, for our purposes, it must be taken that Gloria moved onto land which belonged to Rema. I accept that Gloria's house was built in the 1990's and not the 1970s and that when she moved onto the land, she occupied the house that she and/or her husband built. I do not regard it as a mistake on the part of the ancillary claimants when they said in their affidavit evidence that Gloria's house was built in the 1970s and that she moved onto the land in the 1970s, but rather an attempt to deceive the court. I therefore reject Steve and Natalee's evidence (see joint affidavit) that Gloria has occupied the disputed property since the 1970s notwithstanding their assertion that she carried on farming activities on the land.

[116] One of the grounds relied on by Steve in his Ancillary Fixed Date Claim Form (see ground d), is that Gloria acquired possessory title to lots 12 and 13 based on her undisturbed possession and occupation for a period in excess of 12 years and so Rema was dispossessed of any rights and title to those lots, save and except the slaughter house, the shed and family grave. However, as observed before, the evidence does not support a finding that Gloria is entitled to claim the right to a possessory title and certainly not in respect of any portion of the property that Steve is claiming.

[117] There is however, evidence from which it could be garnered that Gloria occupied the property openly, continuously and undisturbed from the time the house occupied by her was built. On a simplistic view that Gloria occupied the land with Rema's permission without acquiring any equitable interest, that permission would in the circumstances only have been revoked by the transfer of the property or letter from Mrs McKenzie Morris dated 7th of November 2018, requiring that Gloria vacate the property.

[118] Joy stated that she was not aware of any letter being sent to Gloria prior to the transfer of the land regarding her leaving the land. No one has given any evidence to indicate that Gloria was ever served with notice prior to the transfer of the lands to the claimants.

[119] As demonstrated by case law, open, undisturbed and continuous occupation even for the required period of 12 years or more without the presence of the other elements cannot give rise to a claim to a possessory title. That possession and occupation must also be exclusive. There must also be evidence of the intention to possess. No such evidence has been presented. Exclusive possession has not been established on the evidence which this court accepts. I accept Barry's evidence that in 2007 he asked Rema for permission to build a barber shop on lot 12 and that it was Rema who permitted him to build it. Further, that it is with Rema's permission that he built the slaughter house.

[120] It is critical to this case as Miss Minto observed, that the evidence coming from Steve and Natalee in particular, is that the three parcels of land were considered and treated as one lot of land and that the designations lot 11, 12 and 13 were not always known to them. It is only Norma who claims to have known of that designation, and her evidence in that regard is rejected. The only division known based on Steve and Natalee's evidence, was between the portion said to have been under Rema's control which we now know is lot 11, and the portion said to have been occupied and controlled by Gloria which we now know to be lots 12 and 13. Whether the land is considered as one or as two separate portions, there has

not been exclusive occupation of the disputed portion of land. Gilda was buried there in 2009. The sketch plan of Mr Henry depicts the grave as being on lot 13. Based on the evidence I accept, Barry began to utilize the portions of what is now known as lot 12 since at least 2008 and he remains on the land to date. There is no evidence as to the necessary intention that has to be demonstrated on Gloria's part.

[121] It is not really accurate to state that it is hotly disputed and contradicted on the ancillary claimants' own case as to whether the house occupied by Gloria in which Natalee claims an interest was built by Gloria. It must firstly be noted that any evidence from Kemar as to who built that house is more likely than not, hearsay. Kemar in an affidavit filed April 22, 2021, deponed that he was 32 years old. This means that he was born at the earliest, in 1988 and would not have personal knowledge as to who was responsible for building the house.

[122] It was Natalee's evidence that Gloria and her husband raised a home on the disputed lands. She says she has personal knowledge of this fact. (see paragraph 7(a) of her affidavit filed March 4, 2022). She was in fact in a position to have personal knowledge of such matter as it is the uncontested evidence that she lived with Gloria since she was a small child. On her evidence, she was born on the 30th of August, 1969. Norma, Natalee's mother, said Gloria and her husband built the house. That evidence has not really been seriously contested by the claimants or any of their witnesses. Joy said in her affidavit evidence that she didn't know of Gloria building the house because Gloria has never worked a day in her life. She did not dispute however that Mr Aarons built the house. In cross examination she was asked if she agreed that there was no objection to Gloria building the house and her response was that she didn't know. Carlena's evidence is that Rema bought the land and Gloria asked Rema's permission to come onto the lands after the bank sold Gloria's home in Mango Valley. That home she said was owned by Gloria's husband, an Englishman Alfred Aarons.

[123] The ancillary defendants rely on the case of **Ikebife Ibeneweka and others v Peter Egbuna and another**]1964] 1 WLR 219. This case supports the position that there is no rule or law which prevents the court from making a declaration of right of matters of law against an interested person who is not before the court. In **Ikebife Ibeneweka,** there was a dispute between the appellants and the respondents in respect of title to an area of land. The respondents sued the appellants in their personal capacity and as representatives of the Obosi Village and sought a declaration of title to the disputed land, injunction and recovery of possession. In their defence, the appellants denied that they were the persons to represent the Obosi people. They also denied the respondents title to the land and put them to strict proof of same. Additionally, the appellants showed that the Obosi people had rights of ownership.

[124] The Federal Supreme Court of Nigeria dismissed the appellants' appeal from the trial judge's decision making a declaration of title in favour of the respondent. The appellants appealed to the Judicial Committee of the Privy Council and argued that in making the decision, the trial judge, exercised his discretion contrary to accepted legal principles, including those governing the grant of declarations. The Privy Council upheld the decision of the trial judge on the basis that generally, a court will not make a declaration of right of matters of law against an interested person who is not before the court. However, no rule or law prevents the court from doing so where some of the interested persons are not before the court. The Board found that this was an exceptional case in that the appellants did not appear to have any true interest to oppose the declaration sought but defended the case as the true defendants would and were in fact acting as the advocate for the true defendants. Therefore, it was held that the judge was permitted to make the declaration.

[125] Viscount Radcliffe who delivered the judgment of the Board stated at paragraph 225 that **"…*generally speaking, a court is not disposed to make declarations of right about matters of law when it is apparent that the declaration asked for concerns other interested parties who are not presently before the court. Where the judgment is inter partes, as most judgments are, persons not formally before the***

court will [n]ot be bound in law by such a declaration, but it is inconvenient and, sometimes, embarrassing for them to have such declarations pronounced in their absence."

[126] As indicated before, Gloria is not before the court. The three individuals who would be most competent to speak to the precise arrangement between Rema on the one hand and Gloria and Gloria's husband Mr Aarons on the other hand, would be those very individuals. It is common ground that Mr Aarons is now deceased, Gloria suffers from dementia and Rema, though a party to this case is now elderly and confined and was not able to participate personally in these proceedings. Accordingly, the evidence in chief of any such transaction or arrangement is not likely to be very much improved if there were to be future proceedings.

[127] I am however cognizant that the parties have not conducted the case as if Gloria were a party to the claim. In fact, the ancillary claimants have not sought any orders or declarations with respect to Gloria's interest. It is quite likely that other evidence would have been led regarding that issue if in fact, Gloria had been made a party to this claim. It would have been prudent for either side in these consolidated claims to have embarked upon the proper procedure so that effectively she could have been joined. The court makes the observation that a claim was filed bearing the names of Gloria Rattigan and the first ancillary claimant Natalee Silvera as claimants against the persons named as claimants in these consolidated claims. That claim was subsequently discontinued. The obvious reason for discontinuing that claim is that Gloria was clearly not in a position to have been able to give instructions for the claim to be filed. An application to appoint a representative to conduct Gloria's case could quite easily have been made. It is of interest to note that Joy's evidence in cross examination is that she wants Gloria off the land, yet she has not taken steps to make her a party to the claim. The claimants' response to this observation may very well be that it is entirely up to them to allow Gloria to remain at their discretion. But as will be seen, the position is not as straightforward.

[128] I believe in the circumstances of this case, that although there are exceptional circumstances in that none of the three persons with intimate knowledge of the arrangements is available or is likely to ever become available, it would not be prudent to make any declaration as to Gloria's interest in the disputed property especially in light of the absence of any request for a declaration in that regard. Indeed, no such order or declaration was sought. There is not in this court's view precise evidence as to what promises if any Rema had made to Gloria and/ or Mr Aarons.

[129] The questions that would have to be decided by the court in relation to Gloria are

1. Whether any promises or encouragement were made to Gloria which caused her to act to her detriment

2. Whether she acted to her detriment

3. If the answer to those questions are yes, what if any equitable interest she acquired as a result.

4. What are the remedies to which she is entitled?

The evidence was not necessarily put forward by the parties specifically with a view to answering those questions.

[130] There is however, evidence from which the court can make certain basic assumptions and it is evidence which has been traversed. Whether it was Gloria or her husband who built the house is probably of no consequence. The fact is that Mr Aarons her husband is long deceased and whether he was Gloria's legal spouse or a common law spouse, she in fact remained in occupation of the house many years after his death. There is a sustainable argument to be made that Gloria has acquired an equitable interest in the house occupied by her. This is so in the light of the evidence and in particular the claimants' evidence that Gloria was given permission to build the house, the house was built by Gloria and/or her husband, that she and her husband occupied the house, that she has remained in occupation

for 25 years or more and is in occupation to this day. Further, that house is now occupied by person or persons whom on the face of it Gloria permitted to reside there for an extended period. Those factors all lead to a reasonable inference that Gloria may not have been a bare licensee but more probable than not, the holder of an equitable interest in light of the principle of proprietary estoppel. I make no definitive finding in this regard.

[131] Even if ultimately it were to be decided that Gloria is entitled to a remedy, one question would necessarily be, what should that remedy be. In this instance, if an estoppel is created or were to be established in Gloria's favour, it would operate against Rema and bind her since it is she who must have made any representations to Gloria and/or Gloria's husband, but Rema is no longer the owner of the disputed property. The more important would be if the claimants hold the property subject to rights acquired by Gloria over the house she occupies. This court is at pains to point out that it is not seeking to decide Gloria's rights in these proceedings.

[132] In an article titled **'Proprietary Estoppel and Third Parties after Land Registration Act** 2002 found in Cambridge Law Journal vol.62 issue 3 November 3, 2003 pg.661, the author Ben McFarlane made the observation that there is a debate concerning the nature of rights arising as a result of proprietary estoppel. He posited that there are two competing models. On one view, even after all the requirements of a proprietary estoppel is made out, the party making such a claim only has an equity in his favour. On this analysis any rights acquired by the party making the claim, only take effect once a court has made an order. Until then, that party only has an equity which is inchoate. The question is whether this inchoate equity is a property right. As observed in the article, it is of critical importance to know the nature of this right where a third party has acquired rights to such property; that is where the property owner against whom the equity accrued has transferred to the third party against whom no estoppel exists.

[133] If the inchoate equity is not a property right which burdens the transferred land, then the person in whose favour the equity accrued, will have no claim against the transferee unless there is an independent right arising. On the view just discussed, the acquisition of rights based on proprietary estoppel is a two staged process, the first stage being the occurrence of the particular facts giving rise to the equity and the second stage being the court order awarding rights to satisfy the equity. But if it is accepted that the function of the court is to recognise and declare existing rights, then this theory founders. The observation made was that this model has become the orthodox way of understanding proprietary estoppel.

[134] With regard to the second model, two assumptions are made: the first is that proprietary estoppel is to be treated in the same manner as acquiring other rights. The second is that the capability of the right to bind third parties should be determined by whether the right is personal or proprietary, and not on the fact that the rights arose through an estoppel. Thus is it posited, if the estoppel gives rise to a fee simple interest, then the fee simple will arise without the need for any court order and is thus capable of binding the transferee. If the estoppel gives rise to a license, then that license having arisen without the need for a court order, will not be capable of binding a third party.

[135] The promulgation of the 2002 legislation according to the article was designed to address the issue by judging the effect on third parties of the estoppel that arises in the same way as rights arising by other means. It appears that the statute chose the second model. We have no equivalent legislation in this jurisdiction. The new approach under the legislation was designed to resolve the confusion existing in the law. The new approach is to judge the effect on third parties of rights arising through estoppel. Although we have no equivalent legislation, there is no reason the same approach cannot be adopted. There are a number of decisions based on the fact that rights arising through proprietary estoppel exist before any court order is made. See **Plimmer v Wellington Corporation** (1884) 9 App.Cas. 699. That decision is premised on the prior acquisition of a licence. The decision in **Unity Joint Stock Mutual Banking Association v King** (1858) 25 Beav 72, is also a

decision premised upon the acquisition of proprietary rights in the form of a licence prior to a declaration via a court order. The case of **ER Ives Investment Ltd v High** [1967] 2 QB 379 also supports the view that the right is choate.

[136] I discuss those matters because my conclusion on Gloria's status has significant implications for the case against Steve, Kemar as well as Natalee. Natalee and Kemar's right to occupy the house is contingent on Gloria's status and consequently Gloria's rights as it relates to the disputed property.

NATALEE SILVERA AND KEMAR KELLY

Submissions – claimants/ancillary defendants

[137] Miss Minto directed the court's attention to the reliefs sought by Natalee for a valuation of the dwelling house that Gloria lives in and an order that the sum determined on the valuation of Gloria's house be paid to her. She argued that Natalee is seeking these reliefs without any regard to the fact that Gloria is alive, still living in the house, and has not gifted anything to her in writing, in keeping with the Statute of Frauds. She further argued that there is no evidence as to the actual sum allegedly spent by Natalee in respect of these renovations. Not one receipt, she said, in respect of these works although renovations were being done as recent as the time of the filing of the suit in 2019.

[138] In relation to the relief Natalee seeks for a survey of the portion owned and occupied by the ancillary claimants since 1975 and that the portion be conveyed to her, counsel contended that Natalee's evidence in re-examination makes it clear that she has not been occupying the land since 1975 and that she was living in the house built by Alfred Aarons before she moved on to the land in the 1990s. Therefore, counsel argued, Natalee was a licensee throughout the duration of her occupation of the land and based on the authority of **Mckoy v McKoy** cannot claim ownership by adverse possession in those circumstances. Counsel argued that in

any event, Natalee has migrated and no longer occupies the house. So, she stated there has been a cessation of possession on her part before the claim and ancillary claim were filed. The assertion that she is still in possession because she has left clothes at the premises is insufficient as based on **Wills v Wills** [2003] UKPC 84, trivial acts of possession are insufficient. Further she argued that there could be no act of opposition from Rema as it relates to Natalee in circumstances where there is no evidence that Rema even knew that she was carrying out any construction on the house occupied by Gloria.

[139] Counsel maintained that Kemar has nowhere in his defence to the claim for recovery of possession relied on the statute of limitations, which must be pleaded. Instead his defence is simply that Gloria is the owner of the land and he is there with her permission. Further, since no claim in respect of Gloria's rights has been heard and determined, that Kemar's defence is without legal basis and cannot be sustained as against the registered owners. She relied on **Yvette Rowe (Administrator of Estate Allan Rowe) v Janet Rowe** 2019 JMSC 146 for her submission that Kemar has acquired no interest in the property and has filed no ancillary claim seeking such an interest.

[140] Miss Minto highlighted that Kemar was not called to be cross examined on his affidavit although present throughout the trial. Therefore, she submitted, he has not pursued his defence and an order should be made against him. Instead counsel argued that Kemar is a licensee and that his license was revoked when notice to quit was served on him in 2018. It was counsel's submission that the challenge to the claimants' notice to quit on the basis that they were not yet formally registered as owners when they gave the notice to quit is of no moment as the claimants are not required to give any notice to the defendants who are not the claimants' tenants or licensees.

[141] In the alternative, counsel also relied on **Arthur McCoy and Marcia McCoy v Fitzroy Glipsie** [2012] JMSC Civ 80, where Sykes J (as he then was) reiterated

that if a party is residing in the home of another squatter then that party cannot claim adverse possession.

Submissions – defendants/ancillary claimants

[142] It was the submission of counsel for the ancillary claimants that Natalee acquired a beneficial interest in the property at lot 12 by proprietary estoppel by virtue of her expenditure in renovating a dwelling house on lot 12 with the knowledge, acquiescence and/or encouragement of Rema, the former registered owner, and Gloria the beneficial owner.

[143] Additionally, counsel argued that by Rema's acquiescence from the time of the acquisition of the property, Gloria suffered a detriment by expending money in constructing a dwelling house on the premises at lot 12 and on the part of Natalee, she suffered a detriment in renovating and expanding on the said house on lot 12.

[144] He further argued that Gloria's statement that everything she has is for Steve and Natalee supports the defendants/ancillary claimants' claim by virtue of the fact that Gloria is in fact the beneficial owner of lots 12 and 13 and she gave to Natalee her interest in the house and land which Natalee improved and renovated. Further, that the affidavit evidence of the claimants/ancillary defendants indicate that the only time there was any protest or action was after the titles were transferred.

[145] Counsel submitted that Kemar occupies the property with the permission of Gloria as her licensee. She relied on the evidence of Natalee that he moved to lot 12 in 1990 from he was 2 years old and remains there until present, the evidence of Mellody that when she left Jamaica in 2002 Kemar lived in a house on lot 12 and that the only notice to quit served on Kemar is dated 2019 after the property was transferred to the claimants/ancillary defendants which showed that he was still in possession.

Analysis

[146] Different considerations from those affecting Steve's tenure arise as it relates to Natalee and Kemar. Joy states that when she visited Jamaica in 2014, no renovations had been done to Gloria's house and any renovations done by Natalee, were done after notice was served in 2018. It is therefore her evidence that Gloria could not have given permission to Natalee to improve the house since she by then had dementia. Joy stated that prior to 2014, it was an outside bathroom that was being used. Although her evidence was confusing and somewhat contradictory in this regard, I formed the clear view that she was saying however, that prior to 2018, there had been renovations to the inside of the house as well as to the roof of the house. When it was suggested to her that Natalee did renovations to Gloria's house long before 2018, she ultimately settled on saying that if Natalee did, it didn't concern her, presumably because she had no interest in the house prior to that time.

[147] Natalee's evidence is of course quite different. She asserted that since age 27 she had been carrying out improvements to the house on the basis that Aunt May [Gloria] had told her that whatever she has is hers and in particular, had told her that the house was hers. She asserted that she has been paying property taxes between 2010 and 2015. The documentary evidence however, indicates that in 2015 she made payments for the period 2010 to 2015. (See exhibits 63, 64 and 65 contained in bundle number 4). She stated that she decked the roof in 2018. She did not specifically say when the addition of the living room and kitchen was done. She produced one receipt dated 2013 and four others dated 2017, evidencing purchase of building materials. It is observed that a significant number of blocks were purchased in June and October of 2017. That observation lends credence to the assertion that major addition was done in 2017 or after.

[148] Regarding Natalee's assertion that Rema acquiesced in her improvement to the house occupied by Gloria, the only evidence given apparently with a view to supporting this contention, is that in paragraph 16 of Natalee's affidavit filed March 4, 2022 to the effect that "Aunt Rema was also well aware of the substantial improvements I made to the home on lot 12. All she said to me when she came

and saw the work mentioned in paragraph 9 herein, is that it was “long time Sister May should have done that”.

[149] Such evidence cannot support the necessary requirements of representation (an assurance of rights), reliance (change of position) and unconscionable disadvantage (detriment). It has not been shown that Rema by her words or conduct, behaved in a manner so as to have led Natalee to believe that she would not have insisted on her strict legal rights or that Rema knew or intended that Natalee would act on any such belief. By her own evidence, Natalee is saying that Rema made the observation in relation to work already done. The second observation is that there is nothing in Natalee’s evidence to indicate that Rema knew that the work on the property was being carried out by Natalee. Further, the evidence which was not contradicted by the ancillary claimants, is that Rema last visited Jamaica in 2009. It is not clear from Natalee’s evidence what renovations had been carried out up to that point. It is quite conceivable that any renovations carried out up to then based on Joy’s evidence, were renovations that were in the nature of repairs and also such as would have made the house more comfortable to the occupants. This court is not satisfied that Natalee commenced improvements to the house after she became aware of the transfers of June 2018. It is quite probable however, that she continued the improvements even after becoming aware that the property would be transferred. I arrive at this conclusion based on Joy’s evidence that work continued even after June 2018.

[150] With an inability to rely on the doctrine of proprietary estoppel as far as Rema is concerned, Natalee has no remedy against Rema. It is evident from the foregoing that Natalee has not established that she has a beneficial interest in the property independent of any interest, if any, that Gloria might have acquired. To the extent that Natalee is saying that she expended sums on the property based on assurances given by Gloria, such claim could only be maintained against Gloria as a matter of law. In the same way Steve is not able to rely on Gloria’s alleged assertion that everything she owns belong to him, in order to establish a beneficial interest in any portion of lots 12 and 13, Natalee is not able to claim an interest.

[151] Miss Minto raised the point that Kemar was not called to be cross examined although he was present in court and remarked that he should be deemed as having abandoned his defence, so an order for possession should be made against him. It would appear that that was an omission not to have called him to the witness stand. It was also open to counsel for the claimant to alert the court or counsel for the defendant that Kemar was not called to the witness stand and that he was required for cross examination. Be that as it may, the failure to cross examine him does not necessarily in my view mean that the court is precluded from assessing the case against him and that an order should be made against him. That failure of course affects the weight that is to be given to his evidence. This course places no reliance on his evidence in assessing the case for or against Steve and Natalee or in assessing Gloria's status for other reasons which are alluded to at paragraphs 120 and 190; that is his evidence in large measure consists of assertions of which he could not have had personal knowledge and so were either hearsay or even possibly simply fabrications.

[152] Kemar is not claiming an interest in the property but is merely saying in essence that the claimants are not entitled to possession because the owner of the house which he occupies is Gloria and she gave him permission to be in occupation and she has not asked him to vacate the property. Further, the evidence which has not seriously been contradicted, is that he is presently Gloria's caregiver. Whether or not Kemar is obliged to vacate, is dependent on Gloria's tenure. There is no basis in fact or in law on which it could be assumed that Gloria is a squatter, thus the position that if a party is residing in the home of another squatter then that party cannot claim adverse possession, is not applicable to any of the parties in this case.

[153] Natalee and Kemar occupy a house which the evidence reveals, was built by Gloria and/or her husband. This court cannot assume that Gloria is a bare licensee and is removable at will or with reasonable notice, and consequently that Natalee and Kemar who occupy at her instance are also removable at will or with reasonable notice. I have arrived at this position being fully alert to the law that the

holder of a registered title to land holds an indefeasible interest in such land and that such title is subject to limited interests. It is however the case that one such interest to which **a title holder** may be subject, is a claim in personam, founded in law or in equity. Considering that the transfer to the claimants was said to be by way of gift, the transferees(claimants) would be bound by a right in personam which binds the transferor (Rema).

[154] Thus, if the position (as discussed at paragraphs 131 to 134 above) that an estoppel giving rise to a fee simple interest (or even a licence that has not been determined) may arise without the need for any court order and is thus capable of binding the transferee is accepted, then in light of what appears to be compelling evidence in favour of a finding that Gloria has acquired an equitable interest of a proprietary nature which may well be as great as a fee simple interest in the house she presently occupies, it would be wrong to make an order that persons occupying that house with Gloria's permission while Gloria is still in occupation be made to vacate. Whether or not Kemar should vacate, the property cannot be answered in the claim against him as presently constituted.

[155] This court makes it clear that Natalee has not established a case that she is entitled to any of the declarations sought. Indeed, it is abundantly clear that she has failed miserably in her quest to establish that she has any interest whatsoever in any portion of the property apart from the house. This court is also not saying that she has acquired an interest in the house occupied by Gloria. Having failed to make Gloria a party to her claim, Natalee cannot succeed in her counterclaim to the extent that she claims an interest in the house.

STEVE STERLING

Claimants/Ancillary Defendant's submissions

[156] Miss Minto argued that nowhere in Steve's defence to the action for recovery of possession has he relied on, or pleaded the Limitation of Actions Act. Miss Minto highlighted that the foundation of the ancillary claim that Gloria who had been in

possession of the property since 1972 had given Steve permission to construct the plaza in 1999 was eroded by evidence in cross examination. She referred to the evidence that Gloria moved on to the property in the 1990s. Based on this evidence, Miss Minto argued that Gloria was in no position to give Steve permission to build in 1999.

[157] It was counsel's further argument that since the ancillary claimants deliberately misled the court on such a simple thing, their credibility has been severely undermined, and compelling corroborative evidence is required as to when the construction started. Further she argued, the heavy burden is entirely on Steve to establish when the construction started and all that is before the court is hearsay, contradictory and self-serving dates as to when construction commenced. Counsel also highlighted that the valuation report adduced by the claimants/ancillary defendants estimates the plaza to be 10 years old as at 2018.

[158] Counsel directed the court to Steve's evidence that "*Rupert did not supervise construction, he paid the workers. When he was not making enough money from the plaza initially he closed the building and sold the stock. By 2016, Steve started to rent it out again*". She argued that this means that the building would have been closed from 2000/2001 initially after completion for a full fifteen years until 2016. She further submitted that on the authority of **Brown v Brash and Ambrose** [1948] 2 KB 247, if the absence from the property is protracted, even if there is an intention to return, the claimant cannot maintain that he has retained possession of the property. The building by itself, she stated, is not sufficient possession, as a stranger may enter and occupy. It was counsel's further argument that the reasonable inference and greater probability is that the building was closed by Rupert in response to the notice to quit served in October 2015 and that it is improbable and nonsensical that Rupert would have closed the building from 2001-2016. This evidence she says also renders the 2001 completion date incredulous. In any event counsel argued there would have been a cessation of user, and the limitation clock would have restarted in 2016 three years before the action was filed.

[159] Miss Minto also argued that by no objective standard could Steve be considered to be in single and exclusive possession of lot 12 with the intention of excluding Rema, as Barry had buildings on and occupied both lots 12 and 13. Counsel highlighted that it is well settled that possession by an agent, is considered possession by the principal. Further that on Steve's own case he said "*we were all one family occupying the land together*". Counsel also argued that Steve could not have exclusive possession as Gloria's house is also there. It was argued further, that joint single possession cannot be maintained by Natalee, Steve and Gloria in respect of lot 12 as Barry is also occupying lot 12. In any event Gloria is not a party to this action, for the purpose of this joint possession.

[160] Counsel further highlighted that Steve is not in possession of a distinct portion of the land and neither has he sought to establish a particular boundary in respect of where the plaza is located. He engaged a surveyor to survey the entire land. Further, no evidence has been brought to satisfy the court that the lands could be properly subdivided and separate titles issued.

[161] It was Miss Minto's submission that Steve has not established that Rema was dispossessed nor that she discontinued possession of lot 12. Additionally, counsel argued that the claim by the ancillary claimants that they acquired lot 13 by adverse possession cannot be maintained as the surveyor's report show that only Barry has a physical structure on that lot. Moreover, Rema made an entry on lot 13 in 2009 to bury her mother, lots 12 and 13 are considered as one lot on the valuation roll and entry to lot 13 is by lot 12 so Rema's entry on lot 13 is entry on lot 12. Counsel highlighted that the only evidence being relied on by the claimants to ground adverse possession of lot 13 is the spurious allegation of farming by Gloria. However, she relied on the **Wallis's Clayton Bay Holiday Camp v Shell-Max** [1974] WLR 387 where it was held that seasonal farming is not sufficient to ground a claim for adverse possession.

[162] She further submitted that where there is inconsistency and uncertainty as to the animus and nature of possession it will be resolved in favour of the paper title

owner. Counsel argued that the inconsistency between the defence which speaks to the granting of permission and the ancillary claim which speaks to an intention to possess, ought to lead to the conclusion that there is the absence of clear and affirmative evidence on the issue of Steve's intention and the entire claim should therefore fail.

[163] Counsel highlighted that the court ought not to consider the ancillary claim as it relates to Steve because in cross examination he denied knowledge of the ancillary claim. He also stated that it was not executed by him and he denied knowledge of the attorney-at-law who executed it. Miss Minto further argued that the ancillary claim would be in breach of CPR 3.12 as no instructions could have been given for the certificate of truth or the contents of the claim, if Steve did not know the attorney-at-law.

[164] Counsel argued that all the reliefs being sought are equitable remedies and he who comes to equity must come with clean hands. Further, in determining whether to grant promissory estoppel, the court will look at what is conscionable in all the circumstances. Miss Minto stated that what is unconscionable includes the ancillary claimants standing by in 2017, when CIBC advertised the lands they beneficially owned for sale and watching as others pay to release the titles they now claim.

[165] Counsel highlighted that there is no dispute on the pleadings that the plaza erected by Steve is in breach of section 22A (2) of the Town and Country Planning Act as it was erected without building approval of the municipal corporation. Further, she pointed out that it is not in dispute that the building is in breach of the residential zoning for the community and the building encroaches on the parochial road, controlled by the municipal corporation. Miss Minto also highlighted that the valuation report tendered by Steve speaks to each breach and he admitted that a Cease and Desist Order was issued by the municipal corporation.

[166] Counsel relied on paragraph 94 of **Cockings v Cockings** [2014] JMSC Civ 126 for her argument that a party who seeks to establish an equitable interest or seeks to recover compensation for an illegal act will find the court reluctant to help him based on the requirements of justice and public policy. She maintained that the principle is founded on the integrity of the legal system, public policy and not rewarding the transgression of a positive law to this country. Even though the Town and Country Planning Act is in the remit of the municipal corporation, it is against public policy to reward for a construction, which is subject to a Cease and Desist Order. She argued that this would affect the harmony between the different institutions and entities charged with the responsibility of enforcing our law.

[167] It was counsel's further argument that any assertion by Steve in his defence that he is entitled to an order based on proprietary estoppel could not be maintained against the claimants, as the claimants made no representations or assurance to him which he relied on to his detriment by erecting the plaza. Furthermore, the claimants were not even the owners when the building was under construction.

[168] Miss Minto advanced that it is manifestly clear from the evidence that it was not the assurance or representation of Rema that Steve relied on to build the plaza, but that of Gloria. Counsel submitted that according to Steve, it was Gloria who assured him that he would get an interest in the land and she further argued that if Steve did not know Rema was the owner of lot 12 until 2018 then he could not have sought and definitely could not have relied on any assurance from Rema in 1999 that he would get an interest in lot 12, if he built his plaza on lot 12.

[169] Counsel maintained that a close examination of the grounds of the ancillary claim make it clear that as far as Steve knew it was Gloria who owned lots 12 and 13 with Rema controlling lot 11. Yet, she argued, the court is being asked to find that the ancillary claimants relied on Rema's assurances that they would get an interest in lot 12 if they expended money on lot 12. Counsel maintained that the ancillary claim is incongruous and the entire claim is based on hearsay, self-serving promise

from Gloria who has alzheimer's and therefore cannot challenge anything the ancillary claimants have said.

[170] Counsel further advanced that it is not a case where it can be said that Rema acquiesced or tacitly agreed or submitted to the construction. For this argument she relied on **Glover v Coleman** (1874) LR 10 CP 108 at page 119 where Brett J stated

> ***"Acquiescence, according to my view, would mean, not an active agreement, but what may be called a tacit, silent agreement, - a submission to a thing by one who is satisfied to submit. The question for the jury, therefore, upon a suggested acquiescence, would be, whether the plaintiff, although he has not specifically agreed that the thing should be done, has submitted to it, and has been satisfied to submit. Now, "opposition", on the other hand, I should say would mean dissent or dissatisfaction manifested by some act of opposition."***

Miss Minto submitted that in this case there was an act of opposition to the building, on the part of Rema and highlighted that there can be no greater opposition than engaging attorneys to serve notice to quit. **Defendants/Ancillary Claimants submissions**

[171] Counsel for the defendants/ancillary claimants submitted that based on Steve's evidence, he acquired a beneficial interest in lot 12 by proprietary estoppel by virtue of his expenditure in constructing a plaza on the said property with the permission, knowledge, acquiescence and/or encouragement of Gloria, the beneficial owner, and Rema, the former registered owner. Counsel highlighted that apart from the notice to quit dated the 10th of October 2015, there is no evidence of any letter or other document sent to Steve protesting or objecting to his construction of the plaza. Furthermore, counsel argued that the notice to quit dated the 10th of October 2015 addressed to Rupert Henry, which Steve denies receiving, refers to the addressee, Rupert as a bare licensee. Accordingly, counsel submitted, this means that even on the claimants' case, Rupert occupied the property with permission. This counsel argued confounds the other aspect of the claimants' case that the property was occupied and the construction was done

without their consent or acquiescence. Further, counsel maintained that the notice to quit dated 26th of June 2018 addressed to Steve, like the notice to quit dated 10th of October 2015, refers to Steve as a bare licensee and is the first document addressed to him requesting him to deliver up possession of the property.

[172] Additionally, counsel relied on the evidence that Rema told Steve to pay property taxes and that Natalee paid property taxes and submitted that this supports Steve's case that Rema Green did not object and in fact agreed or permitted him to construct the plaza as there is no other explanation for this conduct.

[173] Counsel relied on the authority of **Inwards and others v Baker**. She advanced that based on the evidence the three requirements of representation (or an assurance of rights), reliance (or a change of position) and an unconscionable disadvantage (or detriment) stated by the authors of **Gray and Gray** have been satisfied. Counsel stated that there was a representation or assurance of rights when Rema assured Steve that he could proceed with the construction and when she told him to pay property taxes. Further, that he relied on this representation and he suffered a detriment as he expended a substantial amount of money on the construction of the plaza.

[174] In reliance on **Horace Reid v Dowding Charles and Percival Bain** PC Appeal 36 of 1987 counsel submitted that the documentary evidence and in particular the notices to quit and the letters from the attorney-at-law for the claimants/ancillary defendants dated after the date of the transfer of the properties, show that it is highly improbable that there was not any objection to the construction of the plaza by Steve and the renovation of the house by Natalee before the transfer of lots 11, 12 and 13 to the claimants/ ancillary defendants. As such, counsel urged the court to accept as credible the cases as pleaded by the defendants/ancillary claimants.

[175] Counsel further urged the court to accept as more credible the evidence of Steve and his other witnesses that the construction began in 1999 over that of the claimants' as there is no evidence of any objection in writing to the construction

prior to 2018. As to whether the contention that building approval was not obtained for the plaza and renovation of the house on lot 12 is tenable, counsel cited section 23(1) of the **Towns and Country Planning Act** and submitted that the period of 12 years to serve an enforcement notice under section 23(1) has expired as the building was completed in 2001. Further, counsel argued, prior to an enforcement notice from the relevant authority, a stop notice is required by Section 22A (1) to be served. Counsel highlighted that in the instant case, there is no evidence that a stop notice or enforcement notice was served. Furthermore, the twelve-year-period for serving the enforcement notice has long expired.

Analysis

[176] Miss Minto has argued that Steve denied Knowledge of his attorney at law. That statement is not entirely accurate. Although when asked if Miss Johnston was not his lawyer he responded “no”, he nevertheless pointed at Miss Johnston indicating that she was his lawyer. Admittedly, when asked if he filed a claim seeking compensation for the plaza he built, he responded “no”. When considered that the crux of his claim is that he has an interest in all of lots 12 and 13 with the exception of stated portions, and that the claim for compensation is an alternative claim, this court does not think it reasonable that his claim should be dismissed because he denied that he is seeking compensation.

[177] Barry’s evidence is that when their mother [Gilda Hurst] died in 2009, Rema came to Jamaica and spoke to him regarding Steve building the plaza. He also said that Rema had given him a Power of Attorney and had sent him a form of 60 days’ notice to serve in order to get Steve off the property. He said he signed that notice and gave it to a bailiff to serve on Rupert who was Steve’s agent at the building site. It is not disputed that Steve was not then in Jamaica. The evidence is also that another notice was served on Rupert on October 10, 2015. It is not entirely clear from Barry’s evidence if that 2009 notice was served.

[178] On the converse, Steve's evidence is that while he was residing overseas, he decided to establish a business on the disputed property and Gloria consented to his erecting same. He said he also contacted Rema to get her approval as he was told that the land was owned by the sisters equally and she too consented to him proceeding with the construction. Contrary to Joy's evidence that construction commenced in 2007, Steve deposed that he commenced the construction in 1999 and it was completed in 2001.

[179] I accept Barry's affidavit evidence that the construction of the plaza commenced some years after his return to Jamaica and that he returned to Jamaica in 2004. I also accept his evidence that the construction of the plaza was done on a foundation that he had constructed with a view to establishing his barber shop. I therefore reject Steve's evidence as it relates to the date of the construction of the plaza. I also accept that Steve's agent was Rupert. It is not disputed that Rupert was served with notice in 2015.

[180] It is important to note that Steve's claim (as well as that of Natalee and Kemar for that matter) is in relation to lots 12 and 13, and not lot 11. Steve makes that clear at paragraph 3 of his affidavit filed February 15, 2022. It is Steve's evidence that it was Gloria who gave him permission to build on lot 12 and that he only sought Rema's approval out of respect.

[181] Phillipa has not given any definitive evidence as to when she is saying that Rema voiced her objection to Steve carrying out the construction or when it was that Steve called and spoke to Rema. I do not accept the evidence that Rema initially objected to the building of the plaza. I accept on a balance of probabilities that Steve spoke to Rema regarding the construction of the plaza and that she encouraged him to build. I accept Steve's evidence that he sought her approval, as distinct from her permission. He sought her approval not as owner but as he said, out of respect. What I am confident about, is that Rema was aware that the plaza was being constructed and really did not until 2015, take any active steps to discourage the construction.

[182] I also consider it to be of particular significance that in both the 2015 notice to Rupert and the 2018 notice to Steve, reference was made to each as a licensee. These notices were prepared by an attorney-at-law who must be fixed with acute knowledge as to the implications of referring to someone as a bare licensee. It would have been equally easy to refer to each as a trespasser if that was thought to be the case. It must also be taken that the notices were prepared in conformity with the instructions of the client. I place great reliance on this aspect of the evidence in concluding that Steve had permission to build. Barry's evidence at the very end left me with the distinct impression that the dissatisfaction on the part of Rema came about because Steve refused to pay the property taxes. Barry's evidence in cross examination that it was after Rema went back to America that she advised him that Steve cursed her after she told him to pay the taxes is quite instructive.

[183] Based on the fact that Rema was the sole legal owner, and that the more likely scenario is that Gloria at most acquired an equitable interest in the house spot she occupied, it seems highly unlikely that Gloria was in a position to give Steve permission to construct the plaza on the disputed land or to occupy any part of it even if she purported to do so.

Adverse possession

[184] Even if Gloria could claim title by adverse possession, such a claim would not support or be reflective of Steve's claim in this regard since an alleged oral assertion on the part of Gloria that all that she owns is for Steve and Natalee would be wholly insufficient to grant an interest in property, and particularly, real property.

[185] I accept Miss Minto's submission that none of the ancillary claimants have made out a claim for the acquisition of a possessory title either on the law or on the facts in this matter. She observed that adverse possession cannot be maintained by a person whose possession was obtained and continued by virtue of a license, tenancy, grant or permission expressed or implied from the owner whom he claims

to have dispossessed. Counsel further correctly pointed out that it is only after revocation of the permission or grant that time will begin to run against the owner's title.

[186] This court cannot lose sight of the fact that the ancillary claimants are seeking an order that they are the beneficial owners via adverse possession of the portions of the property with the exception of the slaughter house, shed and family grave and a transfer of the entire portion of land depicted in sketch diagram of Fitz M. Henry dated 14th of April 2021.Whether it was pleaded or not, the defence of adverse possession/acquisition of a possessory title cannot be sustained based on the evidence presented by all the defendants and their witnesses.

[187] Steve is relying on proprietary estoppel based on his expenditure with respect to the construction of the plaza. Further and more importantly, Steve is also saying that he entered that portion of the property based permission from Gloria. To the extent that Steve relies on Gloria's alleged assertion that everything she owns belong to them, that is not a basis on which he can acquire any interest in any portion of lots 12 and 13.

[188] Steve's case is that he had the express approval of Rema to build the plaza. His case is that Rema was upset with him because of his refusal to give Carlena a shop in the plaza and they grew apart. Further, that permission to occupy was revoked effectively when he was served with notice to quit in 2018. Incidentally, I take the view that Steve's permission to remain on the plaza was revoked in 2015 by the service of notice to quit on his agent in 2015. The assertions of building with permission are on the facts of this case inconsistent with a claim via adverse possession.

[189] As indicated before, to claim ownership by virtue of the acquisition of a possessory title is to ignore their own evidence that Rema controlled what we now know as lot 11 and Gloria controlled what they now know to be lots 12 and 13. More importantly, Steve is asking the court to treat the land he claims belong to Gloria

as his and Natalee's, simply on the basis that Gloria told them that what she has is theirs. Gloria is still alive, even if not well. Both Natalee and Steve now seek to have the land segmented in a manner that was never contemplated before. On the view that the area they claim was controlled by Gloria was one parcel, then, they are now seeking to have this court treat the areas where the slaughter house, shed and grave are as separate from that parcel comprising lots 12 and 13, despite the evidence as to the location of those structures. The court makes this observation recognizing the principle emanating from **Perry v Baugh, Wilson et al** that a person in occupation of a different section of a parcel of land at the same time that the title owner was in possession of a different section, had acquired the right to possessory title. The circumstances of this case do not allow for the application of that principle.

[190] Based on my finding on a balance of probabilities that the building of the plaza commenced in or after 2007 and not 1999, there is in any event, no clear evidence to establish that there was twelve years of open, continuous and undisputed possession on the part of Steve of any portion of the land including that housing the plaza. The question of exclusivity of possession would also have presented a challenge based on the evidence that lots 12 and 13 were considered as one lot.

Proprietary estoppel - Whether Rema acquiesced in Steve building the plaza

[191] It is the law as established in **Faulke v Scottish Imperial Insurance Company** (1886) 34 Ch D 234, that expenditure of money on the property of another does not create an obligation on the part of that property owner to repay the sums expended. Proprietary estoppel is the exception to the general rule. It is very clearly not the finding of this court that that is what transpired in this instance.

[192] In **Crabb v Arun DC** Lord Denning made it clear that short of an actual promise, if a party by his words or conduct, behaves in a manner so as to lead another to believe that he will not insist on his strict legal rights or knows or intends that that other person will act on that belief, then that party will be prevented from insisting

on his strict legal rights. I believe that the elements of representation, reliance and detriment have been established. Notwithstanding the assertions by the various persons including Phillipa, Carlena and Joy that Rema did not agree to Steve constructing the plaza, I find that she initially approved and encouraged his conduct. I have come to this conclusion being mindful of the many inconsistencies and evidence that has proven to be untruthful coming from Steve. I place no reliance on any evidence coming from Natalee, Kemar's affidavit (he was not cross examined) or Kevon in coming to this conclusion.

[193] Even if it were not the finding of this court that Rema gave Steve her approval and even if the ancillary claimants' contention that it was not the permission from Rema that Steve relied on to build the plaza, but that of Gloria that's not the end of the matter. The question arises as to whether it may be said that Rema acquiesced in him building the plaza on the land. Whether the contention that Rema fully acquiesced in Steve's construction of the plaza can be made out, is a question of fact as well as one of law, the legal aspect of which must be further examined.

[194] Given Steve's case that he knew Gloria to be the owner of lots 12 and 13 and that he sought her permission and that he only sought Rema's approval out of respect, would it be reasonable to say in these circumstances that he did not rely on any representation made by Rema? It is critical to note that whereas Steve did not regard Rema as the owner of that portion of the land where the plaza was built, Rema would have been acutely aware that she was in fact the legal owner and that Steve required her permission.

[195] What is also beyond doubt, is that by 2009, Rema was aware that construction was in progress. Joy described the building as having no windows and doors and no upstairs when she saw it in 2007.There is no evidence before the court that I find to be believable as to when the construction of the plaza was substantially completed. Assuming that I am wrong in concluding that Rema gave her express permission for the construction of the plaza, there was an extended period of time after the point at which I feel sure that Rema was aware that the plaza was under

construction, during which time there is no evidence of any act of disapproval or the taking of any steps to alert Steve or his agent of her disapproval.

[196] I find that the first act of disapproval on Rema's part was through the notice served on Rupert in 2015. I place no reliance on Barry's evidence about receiving a notice in 2009 from Rema that was given to a bailiff to serve on Rupert. I am doubtful that that took place based on his evidence in chief juxtaposed with his evidence in cross examination. The fact that Barry received a Power of Attorney from Rema in early 2009 also coincides with the form of 60 days' notice signed by Barry and directed at one Patricia Rattigan, evidently in relation to property owned by Rema. Although the source of Joy's knowledge in this regard is not very clear, when it was suggested to her that there was no protest or request for Steve to stop the construction, her response was "from Rema Rattigan that he shouldn't build on it from 2015". It is not entirely clear as to the state of the building at that time. But it appears from the evidence that the construction was far advanced or even completed. It was known to all that Rupert was not present on the property in his own right, but was there as Steve's agent so that any service of notice on Rupert, was tantamount to service of notice on Steve.

[197] In circumstances where even if Rema did not specifically agree to the construction, she sat by idly and allowed Steve to expend significant sums in building the plaza, it could hardly have been her understanding that he would expend those sums without the expectation of being able to at minimum, retain the use of the property for an extended period. I am confident that at a minimum, there was acquiescence on Rema's part, in the sense that she submitted to Steve's actions, and did not indicate to him any disagreement about him building on the property until after the construction was well advanced.

[198] On a balance of probabilities, I accept the joint evidence of Joy and Alfred Tischer that construction on the plaza was taking place even after the claim was brought. Reference was made to the addition of a room. In his affidavit filed February 15, 2022, Steve explained that he constructed a wall under the plaza stair case in 2021

and *explained that the purpose was to give standing space to clients of the barber shop where they would not get wet*, presumably when it rained. This explanation seems more probable than not to be true. The fact that this construction was done at that stage does not affect my finding that construction of the plaza was substantially completed. The evidence which I accept is that portions of the plaza had for some time before been rented out.

IS STEVE ENTITLED TO A REMEDY?

[199] As intimated in paragraph 101 above, one of the remaining questions is whether the claimants are bound by any right or interest acquired by Steve in respect of the land. Before I address this question, I shall consider the claimants' submission that on equitable grounds, Steve should not be granted a remedy even if the court takes the view that he has established that he has acquired an interest in the property.

[200] The claimants/ancillary defendants in arguing that he who comes to equity must come with clean hands, rely on the case of **Cockings v Cockings** [2014] JMSC Civ 126. Steve has not sought to contradict the claimants' assertion that he did not seek the required permission of the municipal council to carry out the construction. He admitted that earlier in this year, he was served with a cease and desist order from the municipal council.

[201] In **Cockings v Cockings**, the claimant Herbert and the defendant Grace were registered as joint tenants of two properties, Sharrow and Queen Hill. Herbert alleged that he purchased Sharrow, while Grace contended that Sharrow was purchased solely by her. Herbert also alleged that he executed a transfer instrument transferring his half share to Grace on the tacit agreement that she would only register same if he instructed her to do so, if he became aware that the USA government was about to confiscate any property. Grace stated that Herbert's name was added to the title to secure $30,000 which he loaned her for the closing costs. Herbert sought declarations and orders for the severance of a joint tenancy

of the two properties. Grace counterclaimed against Herbert for a declaration that the transfer instrument signed by Herbert was effective. In the alternative, she sought a declaration that she acquired title by possession to both properties on the basis that Herbert did not visit the properties between 1987 and 2003.

[202] One of the issues before the court was whether illegality on the part of the claimant was a bar to a finding of a resulting trust in relation to the transfer. Dunbar-Green J (acting) (as she then was) found that the transfer instrument was not void and effectively severed the joint tenancy. Also, that the defendant holds the property in trust for the claimant. However, at paragraph 93 Dunbar Green J held that "*a party who seeks to establish a resulting trust by relying on his illegal intent behind execution of a transfer, will likely find the Court reluctant to help him based on the requirements of justice and public policy.*" At paragraph 94 she adopted the opinion of McLachlin J (as she then was) in **Hall v Hebert** (1993) 101 DLR (4th) 129 at 165 *that:*

> ***". . . to allow recovery in these cases would be to allow recovery for what is illegal. It would put the courts in the position of saying that the same conduct is both legal, in the sense of being capable of rectification by the court, and illegal. It would, in short, introduce an inconsistency in the law. It is particularly important in this context that we bear in mind that the law must aspire to be a unified institution, the parts of which – contract, tort, the criminal law – must be in essential harmony. For the courts to punish conduct with the one hand while rewarding it with the other, would be to 'create an intolerable fissure in the law's conceptually seamless web': Weinrib - "Illegality as a Tort Defence" (1976) 26 U.T.L.J. 28 at p. 42. We thus see that the concern, put at its most fundamental, is with the integrity of the legal system." And held that the defendant is entitled to register the transfer as the court will not assist the claimant who has relied on illegality to support his claim."***

[203] The instant case is distinguishable from **Cockings.** In **Cockings**, the defendant sought to rely on his illegal conduct in order to ground his claim. In the instant case, the act of building per se is not illegal. It ought however to be done after permission is sought and received. There is nothing inherently wrong or fraudulent in constructing a building. The claimants have not shown that permission cannot be had after the fact. There is no question that there has been an encroachment since

the valuation report relied on by Steve reveals that there is an encroachment of the building on the parochial road. I do not believe that these are factors that would disentitle Steve to any compensation whatsoever.

[204] On the question of Steve standing by and doing nothing in 2017 when CIBC advertised for sale the lands he claimed he beneficially owned while others paid the money in order that the bank did not exercise its power of sale or foreclose on the mortgage, there is simply no evidence that Steve was asked to intervene. The evidence is that Natalee was advised and used words to the effect that she had property elsewhere.

HOW IS THE EQUITY TO BE SATISFIED?

[205] What rights have been acquired by Steve? Is his interest proprietary in nature? Are the claimants who are Rema's successors in title bound by his rights? How should his equity be satisfied? The answer to these questions are intertwined and will therefore be discussed together.

[206] It is important to emphasize that Steve has no direct claim by virtue of proprietary estoppel against the claimants in this case, since none of them could in the remotest way be said to be estopped from denying his interest on the basis that any of them made any representations to him. Would the claimants take the property subject to any interest acquired by Steve, especially given that the property was disposed of by Rema as a gift based on the endorsements on the duplicate certificates of title.

[207] The contention that Steve has acquired an interest in the land by virtue of the doctrine of proprietary estoppel and so in 2018, Rema could not effectively have passed title to any land encompassing the said plaza because the plaza was constructed prior to the transfer is not a given. In any event, the right which on the face of it may have been acquired is not necessarily determinative of the remedy. The court will nevertheless briefly attempt to examine the question of what right

the equity in question created. Is it a right in the nature of a licence or is it one in the nature of a fee simple interest?

[208] Steve was given permission to build on land which forms part of a larger parcel. It is beyond obvious from the evidence that there could not have been any intent to grant to him an interest in the entire parcel of land. There is nothing to say that Rema had made a gift of that section of the land housing the plaza, to Steve. On that view, Steve's interest is arguably no more than a licence. In this instance, what has been accepted by me is that she permitted him to build or at minimum, acquiesced in him building a permanent structure at great expense. She did not voice any disagreement until the project was far advanced or possibly completed. The general rule is that what is affixed to the land becomes a part of the land. Therefore, where a building is constructed on land, that building becomes part of the land. See **Minshall v Lloyd** (1837) 2 M & W. It is therefore an equally viable argument that Steve was given an interest in that portion of land on which the plaza was constructed. However, in circumstances where there was no evidence of any discussion of matters such as the need to sever that portion of land from the rest, this court leans towards a finding that Steve's interest is more aligned with a licence protected by estoppel and not one protected by a constructive trust.

[209] A licence which is protected by estoppel is proprietary (**ER Ives Investment Ltd v High**). Although there are decisions to the contrary, (see for example, **Haynes v Minors** (1972) 2 OECS 235), the better view is that a licence protected by estoppel is binding on third parties with notice of its existence. See **Inward v Baker** [1965] 1 All ER 446. It cannot be said that the claimants did not have notice of Steve's interest in the property, since the plaza was present on the property for them to see before they entered into any arrangement regarding the property. Even if they were advised by Rema that he had no interest in the property, such assurance would not have been sufficient, since there was a duty on them to ascertain from Steve what his position was.

[210] Regarding the question of whether the transferee is a volunteer, it is observed that the transfer was said to be by way of a gift. However, it is not disputed on the evidence, that there was an existing loan that was paid off by the first and or the second claimant who are now the registered proprietors. Thus there was in fact some consideration given for the transfer of the property to the three claimants although that consideration is not recorded on the duplicate certificate of title. In the end result, although the evidence reveals that there was some consideration for the transfer of the land, the claimants who now hold title to the land cannot be said to be bona fide purchasers for value without notice of the licence and therefore take the property subject to that licence.

[211] The court has a wide discretion as to the remedy that should be granted. The fact that the court may take the view that a licence is the interest created based on the circumstances of the creation of the estoppel does not necessarily mean that the remedy will be in the form of a licence. But this court is bound by the principle that in considering an appropriate relief, the court cannot award a greater interest than was within the induced representation The right acquired, and consequently the remedy granted should be proportionate to the detriment suffered. As observed earlier, the evidence as to what interest was within the induced representation is not unequivocal.

[212] The remedy may vary where it is a licence which stands to be protected. Such outcome is demonstrated by the decision in **Pascoe v Turner** where the fee simple interest was granted. That case however involved the parties between whom the arrangement giving rise to the estoppel was made. A licence protected by estoppel as demonstrated, may also be protected by granting a negative remedy as in **Inward v Baker**, (supra) or by the property owner repaying the expenditure incurred by the licensee as in **Seymour v Ebanks**1980-83 CILR 252

[213] The case of **Inward v Baker**, (supra) demonstrates that the remedy may vary where it is a licence which stands to be protected. In that case, B permitted his son to build a bungalow on his land, B left that land to trustees on trusts for sale in

favour of other persons. The son was permitted to remain in the bungalow as long as he wished. The court simply refused to grant possession of the property to the new owner. This decision was in keeping with the son's expectation. His claim was that he had been given an oral licence for a lifetime.

[214] In **Pascoe v Turner**, the plaintiff and the defendant lived together as partners. They subsequently separated. The plaintiff represented to the defendant that the house and everything in it was hers, thereby causing the defendant to spend most of her income to redecorate, improve and repair the house. The parties had a dispute and the plaintiff demanded possession of the house. The defendant refused to leave the house. The plaintiff brought a claim for possession and the defendant counterclaimed. The judge at first instance held that a constructive trust arose in favour of the defendant. The Court of Appeal overruled that decision. The court considered all the circumstances and held that the grant of the fee simple to defendant was what was required to satisfy the equity. To satisfy the equity Cumming-Bruce LJ said at page 950g "***So the principle to be applied is that the court should consider all the circumstances and, the counterclaimant having at law no perfected gift or licence other than a licence revocable at will, the court must decide what is the minimum equity to do justice to her having regard to the way in which she changed her position for the worse by reason of the acquiescence and encouragement of the legal owner***."

[215] In the case of **Seymour v Ebanks**, a case from the Cayman Island referenced in **Commonwealth Caribbean Property Law Fourth edition** by Gilbert Kodilinye, the claimant had built a cinema on lands over which he had acquired a licence and operated same for some 20 years, the court determined that the equity that the claimant had lost was the right to continue to operate his own cinema. Since the property had been transferred to a third party, it was found that the appellant should have an equity equal to his outlay. He had built the cinema at a cost of 4500 pounds.

[216] A relevant matter to take into account is one which arises from a practical consideration; that is whether the land in question is capable of being subdivided so as to create a separate and registrable parcel. Neither Steve nor anyone else has given any evidence to indicate that the portion of the property occupied by the plaza built by him is severable and comprises land in respect of which he is capable of securing a registered title. That is one of the factors that will influence the remedy granted.

[217] The valuation report relied on assigns a value of $10,000,000.00 to the building constructed by Steve. This document was agreed at trial between the parties. None of the cases reviewed revealed an outcome where the claimant was paid the market value of the building sitting on the disputed land, although this court is satisfied that that is an option open to it. The cases also demonstrate that the court must determine what is the *"minimum equity to do justice". Further, there must be proportionality between the promisee's expectation and the detriment suffered.* Once the court determines the minimum required to satisfy the equity, the court then has a discretion to determine what remedy is appropriate. In this case, that minimum to my mind, is the claimant's expenditure in constructing the building. The court is not obliged however to award the minimum equity. Having regard to the concession that proper permit has not been sought and received for the construction of the building, the claimant ought not to recover the market value of the building. If an order for full compensation were to be made and in the future the municipal council decides that the building is to be modified or even demolished, then Steve would have received compensation for a building that the claimants either cannot have the benefit of its use, or would be put to expense in order to.

[218] Among the many orders sought by Steve are those at 18 and 19 of the Ancillary Fixed Date Claim Form. Order 18 is that "by virtue of his extensive contributions of labour and money in the construction of the plaza he be compensated in the sum of five million dollars or the sum to be determined by a licenced valuator." In the alternative, he sought at 19, an equitable charge or lien on the property on account

of the sums expended. He also sought an order (21) restraining the ancillary defendants and their agents from interfering with his quiet use and enjoyment of the property.

[219] In the result, I think it appropriate to grant orders 18, 19 and a modified version of order 21 in Steve's favour.

[220] The claimants have also sought compensation in the way of mesne profits on account of Steve's occupation of their property. The defendants/ancillary claimants' attorney-at-law on Steve's behalf in the Reply to the Defence of the 4th Ancillary Defendant, remarked that the claimants are claiming mesne profits "as if they had placed any structure on the land from which income could be generated". (See paragraph 6 of that document). The owner of land is entitled to compensation for unauthorized occupation of his land in circumstance where such occupation amounts to trespass and this is regardless of whether such land is improved or unimproved. The claimants are not however, in my view, entitled to mesne profit in this instance since it cannot be said that Steve's occupation was ever, or is now unauthorized.

COSTS

[221] The orders as to costs made herein are based on the provisions of rules 64.6 of the Civil Procedure Rules. Sub rule (1) provides that if the court decides to make an order as to costs in proceedings, the general rule is that it must order the unsuccessful party to pay the costs of the successful party. Sub rule (3) permits the court to have regard to certain factors when deciding who should be liable to pay costs. Those factors are set out in sub rule (4). Among the factors delineated in (4) is that at (4)(b) to the following effect:

> **whether a party has succeeded on particular issues, even if that party has not been successful on the whole of the proceedings.**

[222] Rule 64.6(5) speaks to the orders which the court may make, including that at (a) which is for a party to pay a proportion of another party's costs. Because one of the orders sought by the claimant is granted, it cannot be said that Steve was wholly successful in the claim. Further, since the ancillary claimants have not managed to secure a number of the orders sought in the ancillary claim, it also cannot be said that they have been wholly successful on the ancillary claim. The claimants have failed to secure only one of the orders sought against Kemar Kelly. He is nevertheless entitled to his full costs, notwithstanding that an injunction was granted restraining him from interfering with the claimants' quiet use and enjoyment of portions of the property. The fact is, he never claimed an interest in the property. The court however apprehends that he might feel entitled to access and utilize those portions of the property in light of his mother and uncle's claim to an entitlement, hence the order.

CONCLUSION

[223] There is no basis on which to impugn the transfer of the disputed property from the fourth ancillary defendant to the claimants, or the transfer from the first, second and third claimant to the first and second claimants.

[224] Gloria's interest in the disputed property cannot be determined in this claim. Kemar entered into occupation of the house with Gloria's permission, hence the claimants are not without more, entitled to an order for possession against Kemar. Natalee has not established that she has an interest in the house or any portion of the disputed property. Thus she has failed to secure any of the other orders sought in the ancillary claim. The claimants are not however at liberty to interfere with her occupation of the house in which Gloria lives.

[225] The court observes that both Amended Fixed Date Claim forms bearing numbers SU2019CV02929 and SU2019CV02930 and filed October 2, 2020, seek remedies against Steve Sterling. The court views this as a mistake, since claim number SU2019CV02930 was brought against Kemar Kelly.

[226] The fourth ancillary defendant has retained no interest in the disputed property. The evidence is that the third claimant retains no legal or equitable interest in the disputed property since she has transferred her interest to the first and second claimant. The duplicate certificates of title that were exhibited do not however reflect the transfer which removes the third claimant as a registered proprietor, thus out of an abundance of caution, this court will direct the order to not interfere with the ancillary defendants' and Kemar's quiet use and enjoyment of the relevant portions of the property against her as well. The court sees no need to direct any orders in relation to the fourth ancillary defendant.

[227] None of the ancillary claimants is entitled to any order or declaration transferring the disputed property or any portion of it to them. Steve is however entitled to compensation for the plaza. Based on my findings, I believe it appropriate to grant only a modified version of the order sought at order (21) of the Amended Fixed Date Claim Form in Steve, Natalee and Kemar's favour.

[228] In the result, I make the following orders:

1. The claimants are granted an injunction restraining Steve Sterling, Natalee Silvera and Kemar Kelly, their servants and/or agents from interfering with the Claimants' quiet use and enjoyment of the lands registered at Volume 989 Folio 172 and Volume 989 Folio 173 of the Register Book of Titles, (excluding the plaza and the dwelling house on lot 12 which is occupied by Gloria Rattigan and Kemar Kelly) and from taking any steps to bar the Claimants from that portion of the property.

2. In relation to claim no. SU2019CV02929 against Steve Sterling, the claimants are not entitled to any of the orders sought except the order numbered (1) of these orders.

3. In relation to claim no. SU2019CV2930 against Kemar Kelly, the claimants are not entitled to any of the orders sought except that numbered (1) of these orders.

4. In relation to the Ancillary claim:

    (i) It is ordered that by virtue of his contribution of money and labour in the construction of the plaza on lot 12, Steve Sterling is entitled to compensation in the sum of five million dollars $5,000,000.00 for his expenditure in constructing the plaza.

    (ii) Is declared that Steve Sterling is entitled to an equitable charge over the portion of the property occupied by the plaza on lot 12 of the disputed property until compensation as ordered is paid in full.

    (iii) An order is granted restraining the first, second and third claimants/first, second and third ancillary defendants and their servants and/or agents from interfering with the ancillary claimant Steve Sterling's quiet use and enjoyment of the plaza until compensation as ordered is paid to him in full.

    (iv) An order restraining the first, second and third claimants/first, second and third ancillary defendants and their servants and/or agents from interfering with Natalee Silvera's quiet use and enjoyment of the dwelling house on lot 12 until the question of Gloria Rattigan's interest is litigated or otherwise determined.

5. An order restraining the first second and third claimants/first, second and third ancillary defendants and their servants and/or

agents from interfering with Kemar Kelly's quiet use and enjoyment of the dwelling house on lot 12 until the question of Gloria Rattigan's interest is litigated or otherwise determined.

6. The court makes the following orders as to costs:

    (i) 75% of Costs to Steve Sterling in claim number SU2019CV02929 against the claimants to be taxed if not sooner agreed.

    (ii) The ancillary claimants are entitled to 50% of the costs of the ancillary claim against the first, second third and fourth ancillary defendants. Such costs are to be taxed if not sooner agreed.

    (iii) Costs to the defendant Kemar Kelly in claim number SU2019CV2930 against the claimants to be taxed if not sooner agreed.

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A. Pettigrew-Collins
Puisne Judge