

14 and 30, The Intestates' Estates and Property Charges Act, section 12, The Administrator General's Act, section 16, The Trustees, Attorneys and Executors (Accounts and General) Act, section 22, The Registration of Titles Act, sections 69, 70, 71 and 85

A. NEMBHARD J

INTRODUCTION

- [1] This matter raises important considerations in relation to the extinction of one co-owner's title to commercial property, by another co-owner, by virtue of the operation of the Limitation of Actions Act, 1881. The property which is central to these proceedings is comprised of all that parcel of land, part of Tankerville Pen, in the parish of Saint Andrew, being the land comprised in Certificate of Title which is now registered at Volume 380 Folio 26 of the Register Book of Titles ("the subject property"). The subject property is located at 214 Mountain View Avenue, Kingston 6, in the parish of Saint Andrew.
- [2] The Claimant, Mrs Phyllis Warren, is the widow of the late Cecil Warren, who, along with his cousin, Kenneth Warren, were the registered proprietors of the subject property, as tenants-in-common. Kenneth Warren predeceased Cecil Warren and died intestate.
- [3] Mrs Warren asserts that she is the registered proprietor of the subject property, both in her capacity as administratrix of the estate of her late husband, as well as in her own right. She asserts that any estate and/or interest in the subject property, which was held by the Administrator General for Jamaica, as the administratrix of the estate of Kenneth Warren, has been extinguished by virtue of the operation of the Limitation of Actions Act.
- [4] By way of a Fixed Date Claim Form, which was filed on 1 February 2022, the Claimant, Mrs Phyllis Warren, seeks the following Orders against the Defendant, The Administrator General for Jamaica: -

- I. A Declaration that the title of the Defendant, in her said capacity as successor to and administrator of the estate and interest of Kenneth Warren, deceased, to the said estate and interest of the said deceased as tenant in common of all that parcel of land, part of Tankerville Pen, in the parish of St. Andrew, being the property registered at Volume 380 Folio 26 of the Register Book of Titles, known as 214 Mountain View Avenue, Kingston 6, in the parish of St. Andrew, has been extinguished by the operation of the Limitation of Actions Act.
- II. A Declaration that the extinction of the said estate and interest is in favour of the Claimant in her capacity as administratrix of the estate of Cecil Warren, deceased and in her own right.
- III. A Declaration that the Claimant in either or both capacities is therefore the proprietor of the said interest formerly held by the said deceased Kenneth Warren and now held by the Defendant, administrator of his estate.
- IV. An Order that the Registrar of Titles note the said extinction of the title of the Defendant and the name of the Claimant in both her capacities as successor thereto, on the said Certificate of Title.
- v. An Order that the Defendant pay the costs of, and associated with, this Claim and Application.

THE ISSUE

- [5]** The singular issue which is determinative of the Claim is identified as follows: -
- i. Whether Mrs Warren has dispossessed the estate of Kenneth Warren, whether in her personal or representative capacity, by her actual and intentional possession of the half interest of the now

deceased Kenneth Warren, of the subject property for a minimum period of twelve (12) continuous years.

BACKGROUND

The factual substratum

- [6] The Claim is brought against the background that, on or about 10 December 1982, Cecil Anthony Warren and his cousin, Kenneth Roy Warren, acquired the title to the subject property.¹ There are four (4) buildings on the subject property, which housed approximately ten (10) offices. There is a large, open work area which is located on the subject property. Several business establishments are being operated on the subject property by persons who were tenants of Messrs. Cecil and Kenneth Warren, prior to their death.^{2 3 4} Prior to their death, both gentlemen operated their respective companies on the subject property, namely, Prudential Services Limited, an accounting and management company, and Ken Warren and Associates, an engineering company.⁵
- [7] On 15 May 1989, Kenneth Warren died, intestate, and is survived by his widow, Margaret Warren and six (6) children.⁶

¹ See – Transfer No. 409215 on the Duplicate Certificate of Title for the subject property which is registered at Volume 380 Folio 26 of the Register Book of Titles.

² It is alleged that prior to Mr Kenneth Warren's death, these tenants, excluding Ken Warren Associates and Cecil Warren's businesses, paid rent to both Kenneth Warren and Cecil Warren.

³ Mrs Warren avers that at the time of Mr Kenneth Warren's passing, she was working with her husband in his accounting and management business as well as attending to the upkeep of the property and "*putting in the foundations to start her own company, Cummings Fabricators Ltd.*". See – paragraph 18 of the Affidavit of the Claimant, Phyllis Warren, which was filed on 1 February 2022, where Mrs Warren details nine (9) other tenants to whom office space was rented to over the years since Mr Kenneth Warren's passing.

⁴ See – Paragraph 18 of the Affidavit of Claimant, Phyllis Warren, which was filed on 1 February 2022. See also – Exhibits "**PW-80**"- "**PW-87**" inclusive of the Affidavit of Claimant, Phyllis Warren, which was filed on 1 February 2022. These exhibits include copies of Tenancy Agreements, receipts as evidence of the collection of receipt, correspondence and other documentation relied on by Mrs Warren and received in her capacity of landlord and purported owner of the subject property.

⁵ See – Paragraph 5 of the Affidavit of Claimant, Phyllis Warren, which was filed on 1 February 2022.

⁶ See – Paragraph 3 of the Affidavit of Melissa White in response to Fixed Date Claim Form, which was filed on 18 July 2022.

[8] On 2 April 1983, a Grant of Letters of Administration was made to the Administrator General for Jamaica, in respect of the estate of the late Kenneth Warren.⁷

The case for the claimant

[9] Mrs Warren avers that after the death of Kenneth Warren, she and her husband exercised open and undisturbed acts of ownership, possession, and control of the subject property, to the exclusion of everyone else and without any confrontation with any relative of the now deceased Kenneth Warren.⁸ Mrs Warren also avers that, herself and her husband continued to collect rent from the tenants who were on the subject property, all of whom began to pay rent to herself and her husband.⁹ It is further averred that Mrs Warren and her husband carried out the following acts of ownership, possession and control in respect of the subject property: -

- i. the payment of the property taxes.
- ii. the payment of the Jamaica Public Service (JPS) electricity bills.¹⁰
- iii. the payment of the National Water Commission (NWC) bills.
- iv. effecting maintenance and repairs.
- v. the alteration and modification of sections of the buildings to create office space and other areas for commercial use.¹¹

⁷ See – Paragraph 5 of the Affidavit of Melissa White in response to Fixed Date Claim Form, which was filed on 18 July 2022. See also, Exhibit “**MW2**” which contains a Copy of the Grant of Letters of Administration to the Administrator General of Jamaica in the estate of Kenneth Roy Warren. See also, Transmission No. 1492235, entered on 12 September 2007 on the Duplicate Certificate of Title for the subject property registered at Volume 380 Folio 26 of the Register Book of Titles. By virtue of this transmission, all the estate and interest of the Estate of Kenneth Roy Warren in the subject property transferred to the Administrator General for Jamaica on 2 April 1993, under a Grant of Letters of Administration.

⁸ See – Paragraph 11 of the Affidavit of Claimant, Phyllis Warren, which was filed on 1 February 2022.

⁹ See – Paragraph 12 of the Affidavit of Claimant, Phyllis Warren, which was filed on 1 February 2022. To support this assertion Mrs Warren relies on copies of the rent receipts purportedly collected from Ken Warren & Associates, Prudential Services Limited and Dr. Antoine, which are exhibited as “**PW1**”, “**PW2**” and “**PW3**”, respectively.

¹⁰ See – Exhibit “**PW5**” of the Affidavit of the Claimant, Phyllis Warren, which was filed on 1 February 2022.

- vi. the collection of rent from tenants.
- vii. engaging KingAlarm in relation to the security of the subject property.

[10] On 20 May 2015, Cecil Warren died, intestate and on 6 October 2016, Mrs Warren was appointed administratrix of her late husband's estate.¹²

The case for the defendant

[11] For her part, the Administrator General for Jamaica contends that, after obtaining the Grant of Letters of Administration, a Notice to Creditors was published in the newspaper, which gave notice to the world at large that the Administrator General for Jamaica, as personal representative of the estate of Kenneth Warren, was accepting claims against the said estate.¹³ It is averred that a Property Officer visited the subject property on 19 January 1994, to take possession of it, in keeping with the administration of the said estate. A Property Report was generated after this visit.^{14 15}

[12] The Administrator General for Jamaica contends that, on or about 23 August 1999, the amount of Thirty-Seven Thousand Four Hundred and Seventy Dollars and Twenty-Nine cents (\$37,470.29), was paid to settle the mortgage, on the security of the subject property, to Victoria Mutual Building Society (VMBS).¹⁶

¹¹ See – Exhibits “**PW6**” – “**PW79**” inclusive of the Affidavit of Claimant, Phyllis Warren, which was filed on 1 February 2022. These exhibits contain sales receipts, quotations, estimates, invoices, and notations relied on by Mrs Warren to support her assertions of absolute and undisturbed ownership of the subject property.

¹² See – Exhibit “**PW-89**”, which contains a copy of the Grant of Letters of Administration, which was made to Mrs Warren, to administer the estate of her deceased husband.

¹³ See – Exhibit “**MW3**”, which contains a Copy of the Notice to Creditors, dated 19 April 1993.

¹⁴ See – Exhibit “**MW4**”, which contains a Copy of the Property Report, bearing File No. 16,303/1, dated 19 January 1994.

¹⁵ See – Paragraph 13 of the Affidavit of Melissa White in Response to Fixed Date Claim Form, which was filed on 18 July 2022. See also, Exhibits “**MW10**” and “**MW17**” which contain copies of the Property Report, dated 22 May 2006 and 10 May 2021, respectively, both prepared after further visits was made to the subject property by the Administrator General.

¹⁶ See – Exhibit “**MW5**”, which contains a copy of a letter sent by Victoria Mutual Building Society, under the hand of Ms Sheryl Griffiths, Assistant Manager of the Mortgage Securities & Servicing Department, dated 21 December 1999, and addressed to the Administrator General's Department. This letter acknowledges receipt of a cheque in

- [13] It is further contended that, prior to his death, Cecil Warren approached the Administrator General's Department with a view to purchase the one-half (½) interest of Kenneth Warren in the subject property. By way of a letter dated 18 July 2005, the Administrator General for Jamaica communicated acceptance of Cecil Warren's offer to purchase Kenneth Warren's share of the subject property. In or around October 2005, Cecil Warren responded by proposing a lower purchase price and by indicating that he would provide the requisite information to facilitate the preparation of an Agreement for Sale. The negotiations between Cecil Warren and the Administrator General's Department continued, culminating in Cecil Warren's final offer for the purchase of the subject property, which was communicated by way of a letter dated 18 July 2005, prior to his passing.¹⁷
- [14] The Administrator General for Jamaica asserts that, in 2015, and after the death of Cecil Warren, Mrs Warren, through her then Attorney-at-Law, communicated her intention to complete the purchase of Kenneth Warren's share in the subject property.¹⁸
- [15] It is further asserted that, prior to his death, Cecil Warren acknowledged the title of the Administrator General for Jamaica and was in negotiation for the purchase of Kenneth Warren's share in the subject property.¹⁹ The Administrator General

the amount of Thirty-Seven Thousand Four Hundred and Seventy Dollars and Twenty-Nine cents (\$37,470.29), of which a total amount of Twenty-Eight Thousand Dollars and Ninety-Six cents (\$28,000.96) was credited to the account for the subject property.

¹⁷ See – Exhibits “**MW6**” which contains Copy of Letter dated 18 July 2005 addressed to Cecil Warren and bearing the signature of Miss Sonja Anderson, Attorney-at-Law, and Manager of Legal Services for the Administrator General for Jamaica. See – Exhibit “**MW7**” which contains a copy of an undated letter purportedly bearing the signature of Cecil Warren and addressed to Ms Joan Jones, Case Officer at the Administrator General's Department. See also – Exhibit “**MW14**” which contains a copy of letter dated 25 May 2013, addressed to Ms Nathifa Grandison, Attorney-at-Law at the Administrator General's Department, bearing the purported signature of Cecil Warren. The content of this letter indicates his acceptance of the sale price of Nine Million Five Hundred Thousand Dollars (\$9,500,000.00), for Kenneth Warren's interest in the subject property.

¹⁸ See – Exhibit “**MW15**”, which contain Copy of Letter dated 17 February 2017 addressed to Mr George G. Soutar and bearing the signature of Miss Nathifa Grandison, Attorney-at-Law for the Administrator General's Department. See also Exhibit “**MW1**” attached to the Affidavit of Melissa White in Response to Fixed Date Claim Form, which is dated 15 December 2022. It contains a copy of letter dated 29 June 2015, addressed to the Administrator General for Jamaica, and bears the signature of Mr George G. Soutar Q.C., the contents of which confirm the death of Mr Cecil Warren and indicate Mrs Warren's intention to conclude the sale of interest in land transaction started by her late husband, with respect to the subject property.

¹⁹ See – Exhibit “**MW11**”, which contains an attested copy of Formal Order dated 8 February 2010. The Administrator General's Department alleges that Kenneth Warren's estate was placed in jeopardy by virtue of a

for Jamaica relies on the following acts of ownership, possession, and control of the subject property: -

- i. the payment of property taxes.²⁰
- ii. the payment of estate duties.²¹
- iii. the payment of property insurance.²²

THE LAW

The law in relation to adverse possession

[16] It is trite law that for a party to mount a successful claim in adverse possession,²³ he must demonstrate a sufficient degree of physical custody and control, (factum possessionis),²⁴ that is, factual possession of the property as well as an intention to exercise such custody and control on one's own behalf and for one's own benefit, that is, the intention to possess (animus possidendi).²⁵ A person intending to dispossess a paper owner of their right to property must be able to demonstrate that he has been in open, continuous, undisturbed and exclusive²⁶ factual and intentional possession of that property for a minimum period of twelve

provisional charging order made against the subject property by Straw J (as he then was) in Claim No. HCV 00342 of 2006. The Administrator General contends that this will continue to bind the land until a certificate of sale is lodged for registration.

²⁰ See – Exhibits “MW8”, “MW12”, “MW13”, and “MW16”, which contain copies of payment advice, letters, and statements of account.

²¹ See – Exhibit “MW9”, which contains a copy Form 8 and Receipt.

²² See – Exhibit “MW13”, which contains a printout reflecting insurance payments over the period of 2009 to 2013 paid by the Administrator General's Department for the subject property.

²³ See – Page 223 of the 4th edition of the Commonwealth Caribbean Property Law authored by Gilbert Kodilinye. He states that: “*The effect of adverse possession is that a person who is in possession as a mere trespasser or ‘squatting’ can obtain a good title if the true owner fails to assert his superior title within the requisite limitation period.*”

²⁴ The land should have been dealt with as an occupying owner of that type of land might normally be expected to do and no other person should have done so.

²⁵ **Buckinghamshire County Council v Moran** (1990) Ch. 623, 642: “*The emphasis is on possession and not on an intention to own or acquire ownership. This requirement of animus possidendi can be inferred from acts of possession. Where therefore the acts of possession are certain unequivocal and affirmative, the requirement of animus possidendi loses its importance as an ingredient of a claim of adverse possession.*”

²⁶ See – Page 290 of the Commonwealth Caribbean Land Law, ‘*Possession is single and exclusive: “plures eandem rem in solidum possidere non possunt” – exclusivity is of the essence of possession.*’

(12) years.²⁷ ²⁸ Time begins to run against the paper owner once he becomes entitled to commence legal proceedings against the adverse possessor, that is, when the person enters into 'adverse possession'.²⁹ The court is usually engaged in a fact-finding exercise to determine whether an adverse possessor has successfully dispossessed a paper owner or registered proprietor.³⁰ This can be attributed to the fact that adverse possession runs counter to the principle of the indefeasibility of a registered title.³¹

Factual possession

[17] Factual possession must be (i) *nec clam* (open and unconcealed) and (ii) *nec precario* (not by permission or consent). The learned author Sampson Owusu, in his text, Commonwealth Caribbean Land Law writes as follows: -

“The land should have been dealt with as an occupying owner of that type of land might normally be expected to do and no other person should have done so.

The character and value of the property, the suitable and natural mode of using it, the course of conduct which the proprietor might reasonably be expected to follow with a due regard to his own interest... are to be taken into account in determining the sufficiency of a possession.

The character and sufficiency or degree of user necessary to constitute possession so as to pass title under the statute therefore depends on many factors, and thus renders the concept a relative term. It is a question of fact depending on all the circumstances of the case, not only on the physical characteristics of the land, the appropriate and natural uses to which it can be put, but also the conditions and the habits and ideas of the people of the locality,

²⁷ If a person is in possession of land or property with the permission of the true owner, his possession cannot be adverse. It should be noted that possession in which the landowner acquiesces, may be adverse.

²⁸ See – **Sanders v Sanders** (1881) Ch D 373: Once a full period of twelve (12) years has run, no payment or acknowledgment can revive any right to recover land, for the lapse of time will have extinguished not only the owner's remedies for recovering the land but also his right to it.

²⁹ See – Page 269 of the Commonwealth Caribbean Land Law authored by Sampson Owusu, 2007 Routledge-Cavendish

³⁰ See – **Rains v Buxton** (1880) 14 Ch.D. 537,539, where the court determined that it is not necessary for the paper owner to know he has been dispossessed.

³¹ See – Paragraph 35-001, page 1457 of the 8th edition of the Megarry and Wade, The Law of Real Property.

and even to a greater extent the course of conduct reasonably expected of an owner of that type of property having due regard to his interests. Consequently, acts of possession which may amount to possession in one case may be wholly insufficient to constitute possession in another.”

[18] Their Lordships in **JA Pye (Oxford) Ltd. v Graham**³² approved the following passage from the judgment of Slade J in **Powell v McFarlane**: -³³

“The question what [sic] acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.”

[19] With respect to the *animus possidendi* element, the following pronouncements of Slade J are equally instructive: -

“The question of animus possidendi is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by or on behalf of an owner in possession will be found to negative discontinuance of possession. The position, however, is quite different from a case where the question is whether a trespasser has acquired possession. In such a situation the courts will, in my judgment, require clear and affirmative evidence that the trespasser, claiming that he has acquired possession, not only had the requisite intention to possess, but made such intention clear to the world. If his acts are open to more than one interpretation and he has not made it perfectly plain to the world at large by his actions or words that he has intended to exclude the owner as best he can, the courts will treat him as not having had the requisite animus possidendi and consequently as not having dispossessed the owner.

³² [2002] UKHL 30

³³ (1979) 38 P & CR 452

...

What is really meant, in my judgment, is that the animus possidendi involves the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow."

[20] Nor is it necessary for the adverse possessor to have had an intention to dispossess or exclude the paper owner. The authorities have established that the relevant intention is not an 'animus dispossessendi' or a conscious intention to dispossess the true owner. The only intention which must be demonstrated is an intention to occupy and use the land as one's own.

[21] The approach to be adopted by the court, in determining a claim for adverse possession, has been comprehensively stated by Sykes J (as he then was) in the authority of **Lois Hawkins (Administratrix of Estate of William Walter Hawkins, Deceased, Intestate) v Linette Hawkins McIniss**.³⁴ At paragraphs 12 and 13, Sykes J is quoted as follows: -

*"[12] The law in this area is no longer in doubt. It was most recently expounded by the Court of Appeal in **Fullwood v Curchar** [2015] JMCA Civ 37. This court cannot improve on the clarity, precision, and exposition of McDonald Bishop JA (Ag). The court will simply refer to paragraphs [29] to [54]. From these passages the following propositions are established:*

- (i) the fact that a person's name is on a title is not conclusive evidence that such a person cannot be dispossessed by another, including a co-owner.*
- (ii) the fact of co-ownership does not prevent one co-owner from dispossessing another.*
- (iii) sections 3 and 30 of the Limitation of Actions Act operate together to bar a registered owner from making any entry on or bringing*

³⁴ [2016] JMCA Civ 14

any action to recover property after 12 years if certain circumstances exist.

- (iv) in the normal course of things where the property is jointly owned under a joint tenancy and one joint tenant dies, the normal rule of survivorship would apply, and the co-owner takes the whole.*
- (v) however, section 14 of the Limitation of Actions Act makes the possession of each co-tenant separate possessions as of the time they first become joint tenants with the result that one co-tenant can obtain the whole title by extinguishing the title of the other co-tenant.*
- (vi) the result of sections 3, 14 and 30 of the Limitation of Actions Act is that a registered co-owner can lose the right to recover possession on the basis of the operation of the statute against him or her with the consequence that if one co-owner dies the normal rule of survivorship may be displaced and a person can rely on the deceased co-owner's dispossession of the other co-owner to resist any claim for possession.*
- (vii) when a person brings an action for recovery of possession then that person must prove their title that enables them to bring the recovery action and thus where extinction of title is raised by the person sought to be ejected, the burden is on the person bringing the recovery action to prove that his or her title has not been extinguished thereby proving good standing to bring the claim.*
- (viii) the reason for (vii) above is that the extinction of title claim does not simply bar the remedy but erodes the very legal foundation to bring the recovery action in the first place.*
- (ix) dispossession arises where the dispossessor has a sufficient degree of physical custody and control over the property in question and an intention to exercise such custody and control over the property for his or her benefit.*

- (x) *the relevant intention is that of the dispossessor and not that of the dispossessed.*
- (xi) *in determining whether there is dispossession there is no need to look for any hostile act or act of confrontation or even an ouster from the property. If such act exists it makes the extinction of title claim stronger, but it is not a legal requirement.*
- (xii) *the question in every case is whether the acts relied on to prove dispossession are sufficient.*

[13] *It is fair to say that in this area of law the analysis of and interpretation of the evidence is influenced by whether the person claiming to extinguish the title is a co-owner or a trespasser. The law seems to require more of a trespasser than a co-owner. The difficulty in co-owner cases, where the dispossessing co-owner has been in possession, is in identifying the point in time when the relevant intention was formed. The difficulty arise [sic] because more often than not the intention is an inference from the act of possession.”*

[22] Professor Gilbert Kodilinye, in the 4th edition of his text, Commonwealth Caribbean Property Law, stated: -

“In order to prevent an adverse possessor from acquiring an indefeasible title under the Limitation Acts, the paper owner must show that, before expiry of the limitation period, he performed acts amounting to dispossession of the squatter and resumption of possession by him. Mere entry upon the land is not sufficient.

A claim to adverse possession of land may also be defeated by a written acknowledgment, made by the person in possession to any person claiming to be the proprietor, to the effect that the latter’s claim is admitted.”

[23] Sampson Owusu, at page 291 of his text Commonwealth Caribbean Land Law stated: -

“Where there is doubt, as, for example, where the evidence is indecisive as to who is in possession, the person who has title to the property is adjudged to be in actual possession and the other person is a trespasser. The person claiming title

by adverse possession has the burden of rebutting the presumption that the paper owner is in possession. The burden is discharged by providing factual possession – factum possessionis and intention to possess – animus possidendi. In Basildon v Charge the Court noted that the holder of the paper title is deemed to be in possession in the absence of contrary evidence. It was for the person seeking to establish adverse possession to produce contrary evidence which must be cogent and compelling evidence of a single degree of occupation and physical control of the land unimpeded by others, with the relevant animus possidendi and for a period of 12 years.”

The statutory framework

The Intestates’ Estates and Property Charges Act

[24] Section 12 of The Intestates’ Estates and Property Charges Act allows the Administrator General for Jamaica to act as the administrator of the estate of someone who dies intestate (without leaving a Will), in certain circumstances. The section reads as follows: -

“12. The Administrator-General –

(a) May apply for letters of administration to an intestate’s estate or when there is a minor entitled to a share thereof, issue an Instrument of Administration, where –

(i) The residuary estate of the intestate does not exceed fifty thousand dollars; or

(ii) A testator does not appoint an executor, or the executor has died before the testator or the executor renounces.

(b) Shall be under a duty to issue an Instrument of Administration in respect of an estate where the residuary estate of the intestate exceeds the sum prescribed in paragraph (a)(i) and a minor is entitled to a share thereof,

So, however, that letters of administration shall not be granted to the Administrator-General or where applicable an Instrument of Administration shall

not be issued (or if already issued, shall be revoked) where the court is satisfied that letters of administration ought to be granted to some other person.”

The Administrator General’s Act

- [25] Section 16 of The Administrator-General’s Act vests the property of a deceased person in the Administrator-General. Section 16 provides as follows: -

“16. On the grant of letters of administration to the Administrator-General, the property of the deceased shall vest in the Administrator-General, and be assets in his hands for the payment of the debts and liabilities of the deceased, in the same way, and to the same extent in all respects, as such property would have vested in and been assets in the hands of any other administrator, if this Act had not been passed, and the Administrator-General shall discharge the debts and liabilities of the deceased, and shall distribute the surplus, in the same way, and in the same order of priority, and to the same extent, that any other administrator would have been bound to discharge such debts and liabilities, and to distribute such surplus, if this Act had not been passed.”

The Trustees Attorneys and Executors (Accounts and General) Act

- [26] Section 22 of The Trustees, Attorneys and Executors (Accounts and General) Act reads as follows: -

“22. Where an executor or administrator shall have given such or the like notices as, in the opinion of the Court in which such executor or administrator is sought to be charged, would have been given by the Supreme Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time limited in the said notices, or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person whose claim such executor or administrator shall not have had notice at the time of the distribution of the said assets, or a part thereof, as the case may be; but nothing herein contained shall prejudice the

right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.”

The Limitation of Actions Act

[27] Sections 3 and 4 of the Limitation of Actions Act, 1881 read: -

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

4. The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say –

(a)when the person claiming such land or rent or some person through whom he claims shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;

(b)when the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death;

(c)when the person claiming such land or rent shall claim in respect of an estate or interest in possession granted, appointed or otherwise assured

by any instrument (other than a will) to him, or some person through whom he claims by a person, being in respect of the same estate or interest in the possession or receipt of the profits of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument;

(d) when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession;

(e) when the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition was broken.”

The Registration of Titles Act

[28] Sections 69, 70, 71 and 85 of The Registration of Titles Act are equally instructive, for present purposes, and are set out below: -

“69. In any suit for specific performance, or in any action for damages, brought by a proprietor of any land under the operation of this Act against a person who may have contracted to purchase such land, not having notice of any fraud or other circumstances which, according to the provisions of this Act, would affect the right of the vendor, the certificate of title of such proprietor shall, if such proprietor is registered with an absolute title, be held to be conclusive evidence that such proprietor has a good and valid title to the land for the estate or interest therein mentioned or described, and shall in any such suit entitle such proprietor to a decree for the specific performance of such contract. And if such proprietor is registered with a qualified title the certificate shall be conclusive evidence that he had a good and valid title, subject to the qualification therein set forth.

70. *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:*

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

71. *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 or unregistered interest is in existence shall not of itself be imputed as fraud.

...

85. Any person who claims that he has acquired a title by possession to land which is under the operation of this Act may apply to the Registrar to be registered as the proprietor of such land in fee simple or for such estate as such person may claim."

THE SUBMISSIONS

Submissions advanced on behalf of the claimant

- [29]** Learned Counsel Mr John Givans submitted that the starting point of any discussion as to whether Mrs Warren and her husband acquired adverse possession to Kenneth Warren's half share of the subject property, must be the time just after Kenneth Warren's death.
- [30]** It was further submitted that, with the death of Kenneth Warren, on 5 May 1989, his possession of his half-share naturally came to an end, because he was no longer in possession of his half-share of the property. That, Mr Givans asserted, is the point at which time would begin to run, as contemplated by section 4(b) of the Limitation of Actions Act.
- [31]** Mr Givans maintained that section 4(b) of the Limitation of Actions Act stipulates when time begins to run against a paper owner and is similar to an English statutory provision which provides that, in circumstances where a person has died while in possession of property and a stranger seizes possession after the death of the former, time begins to run from the date of the death of the former, and not from the time of the wrongful seizure. In the present instance, Mrs Warren would be the "stranger", while the Administrator General for Jamaica would fall under the category of "those who claim under his will or his intestacy". This as she is the appointed administrator of the estate of the deceased.

- [32] Mr Givans maintained that Mrs Warren, along with her husband, has been in possession of Kenneth Warren's half share in the subject property beginning from just after Kenneth Warren died on 5 May 1989. The effect of section 4(b) of the Limitation of Actions Act is the same, Mr Givans asserted, whether the twelve-year period is counted from the date of Kenneth Warren's death, or, from the time that Mrs Warren and her husband assumed possession and control of Kenneth Warren's half-share in the subject property.
- [33] It was submitted that Mrs Warren has satisfied all the elements required to prove adverse possession. Mrs Warren and her husband have been in full, complete, undisputed, and unchallenged control of the subject property, to the extent that they are not simply landowners but landlords, renting offices which are located at the subject property to several tenants and collecting and keeping the rental proceeds. Mrs Warren had the intention to possess and was in factual possession of the subject property and dealt with it as though she were an occupying owner. To support this assertion, Mr Givans relied on the recent Court of Appeal authority of **Glen Cobourne v Marlene Cobourne**.³⁵

Submissions advanced on behalf of the defendant

- [34] Learned Counsel Ms Geraldine Bradford commenced her submissions by reminding the Court that, pursuant to section 12 of the Intestates' Estates and Property Charges Act, a Grant of Letters of Administration was made to the Administrator-General for Jamaica for the Estate of Kenneth Warren. Ms Bradford submitted that, on obtaining a Grant of Letters of Administration, the Administrator General for Jamaica, in accordance with section 22 of the Trustees Attorneys and Executors (Accounts and General) Act, caused a Notice of Creditors to be published in the newspaper, on or about 19 April 1993. This, she asserted, was to give notice to the world at large that the Administrator-General for Jamaica, as the personal representative of the estate of Kenneth Warren, was

³⁵ [2021] JMCA Civ 24

accepting claims against the said estate. Ms Bradford maintained that no claims were received with respect to the estate of Kenneth Warren at the time the period for making any such claim expired, in May 1993. In this regard, Ms Bradford submitted that Ms Warren's several receipts for expenditure made cannot be entertained as a debt to the Estate of Kenneth Warren and would be statute barred.

- [35]** It was further submitted that, on 19 January 1994, the agent and/or servant of the Administrator-General for Jamaica visited the subject property to take "possession" of same. Following this visit, a report was generated, indicating an intention to possess. A further routine visit was made to the subject property on 10 May 2021, and another report was generated. It was submitted that this process of "possession" is required to demonstrate that the estate's personal representative intends to possess on behalf of the estate of the now deceased. This act of "possession" does not require a stranger to the estate to acknowledge the presence of a representative at the subject property at any given time.
- [36]** Ms Bradford maintained that, in 2003, the Administrator General's Department extended an invitation to Cecil Warren for him to purchase the interest of the estate of Kenneth Warren in the subject property. On or about 18 July 2005, Cecil Warren made an offer to purchase the deceased's half interest in the subject property, an offer which was accepted by the Administrator General for Jamaica.
- [37]** Prior to the death of Cecil Warren, he acknowledged the superior title of the Administrator-General for Jamaica to the subject property and remained in negotiation for the purchase of the interest of the estate of Kenneth Warren in the subject property. Ms Bradford submitted that the correspondence between the Administrator General for Jamaica and the Attorney-at-Law for Cecil Warren, demonstrate that Cecil Warren had no intention to dispossess his co-owner. It was further submitted that Mrs Warren, through her Attorney-at-Law, indicated her own intention to complete the purchase of the one-half share of the estate of

Kennet Warren in the subject property. This, Ms Bradford maintained, was an acknowledgement of the superior title of the Administrator General for Jamaica.

- [38] Ms Bradford, in referencing section 3 of the Limitation of Actions Act, maintained that the law requires twelve (12) years of uninterrupted possession. Possession, she argued consists of two (2) elements: (1) factual possession, consisting of a sufficient degree of physical custody and control and for one's benefit; (2) an intention to possess (*animus possidendi*), being an intention to exercise such custody and control on one's behalf. To support this submission, Ms Bradford relied on the principles enunciated by the United Kingdom's House of Lords in the authority of **JA Pye (Oxford) Ltd. v Graham**.³⁶ Ms Bradford maintained that, in the instant case, the Administrator General for Jamaica has paid property taxes, property insurance, settled mortgage payments and obtained a Discharge of Mortgage and has obtained physical possession of the Duplicate Certificate of Title in respect of the subject property. These acts, Ms Bradford maintained, consist of a sufficient degree of physical custody and control for the benefit of the Administrator General for Jamaica, acting as the administratrix of the estate of Kenneth Warren.

ANALYSIS AND FINDINGS

- [39] In any consideration of the singular issue, which is determinative of this Claim, an important starting point must be a recognition that the fact that a person's name is on the Certificate of Title to property is not conclusive evidence that such a person cannot be dispossessed by another person, including a registered co-owner. Sections 3 and 30 of the Limitation of Actions Act, 1881 operate together to bar a registered owner from making any entry on or bringing any action to recover property after twelve (12) years, provided that certain circumstances exist.

³⁶ [2002] UKHL 30

[40] When a person brings an action for recovery of possession, that person must prove his title, which enables them to bring the recovery action. Where extinction of title is raised by the person sought to be ejected, the burden is on the person bringing the recovery action to prove that his or her title has not been extinguished, thereby proving the requisite locus standi to bring the claim. Dispossession arises where the dispossessor has a sufficient degree of physical custody and control over the property in question and an intention to exercise such custody and control over the property for his or her benefit. In determining whether there is dispossession, there is no need to look for any hostile act or act of confrontation, or even an ouster from the property. The question to be determined in each case is whether the acts relied on to prove dispossession are sufficient. The difficulty in co-owner cases, where the dispossessing co-owner has been in possession, is in identifying the point in time when the relevant intention was formed.

[41] Section 14 of the Limitation of Actions Act, 1881 codifies the common law position that possession by one co-parcener, joint tenant or tenant-in-common, is not to be deemed the possession of the other. It is common ground between the parties that, during their lifetimes, Cecil Warren and Kenneth Warren were the registered proprietors of the subject property, holding interest in same concurrently as tenants-in-common. Unlike a joint tenancy, where there is unity of possession, unity of interest, unity of title and unity of time, in a tenancy-in-common, the co-owners have unity of possession only. In other words, there is no right of survivorship. This means that, on the death of one tenant-in-common, his interest in the property does not automatically become part of the estate of the surviving co-tenant. The estate of a deceased co-tenant would pass to his devisee or heir.³⁷ ³⁸ The doctrine of unity of possession characterizes the tenancy-in-common interest in estates. Tenants-in-common typically have a

³⁷ See – Page 334 of the text, Commonwealth Caribbean Land Law authored by Sampson Owusu, 2007 Routledge-Cavendish

³⁸ See – Paragraph 13-011 of the 8th edition Megarry and Wade, The Law of Real Property, which states that: *“When a tenant in common dies, his interest passes under his will or intestacy, for his undivided share is his to dispose of as he wishes.”*

distinct but undivided share in the property, though this can be an equal or unequal share.³⁹ In the result, at the time of the death of Kenneth Warren, on or about 15 May 1989, his one-half (½) share in the subject property passed to his estate. The principle of the right of survivorship does not apply.

[42] In the present instance, the Court finds that there is no evidence before it that Cecil Warren, prior to his death, carried out any act(s) of possession, or that he had an intention to dispossess or otherwise exclude Kenneth Warren from his share in the subject property. Nor is there any evidence to suggest that Mrs Warren, in her own capacity, did so, prior to the death of Kenneth Warren. In fact, the case for Mrs Warren rests primarily on the assertion that she, in her capacity as representative of her husband's estate and in her personal capacity, dispossessed Kenneth Warren's estate of its interest in the subject property. Her claim to the subject property is premised on the assertion that the period of dispossession commenced as at the date of the death of Kenneth Warren, on 15 May 1989.

[43] Mr Givans maintains that there are striking similarities between the factual matrix in the authority of **Cobourne** and that of the present instance. Mr Givans observes that: -

- i. Mr and Mrs Cobourne held their property as tenants-in-common as did Cecil and Kenneth Warren.
- ii. Mrs Cobourne's possession of the property came to an end by her voluntarily moving out of the said property in September 2001. Kenneth Warren's possession of the subject property came to an end by virtue of his death in May 1989.
- iii. Shortly after Mrs Cobourne moved out of the property, Mr Cobourne began to collect and keep the rental income from the

³⁹ See – paragraph 13-010 of the 8th edition Megarry and Wade, *The Law of Real Property*, which states that: “While the tenancy in common lasts, no one can say which of them owns any particular parcel of land.”

property, for his sole benefit and did not account to Mrs Cobourne in relation to same. Mr Kenneth Warren and Mrs Warren collected rent from the tenants for their own benefit and accounted to no one in relation to same. They acted generally in relation to the subject property as any landowner would.

- iv. No one came forward on behalf of Mrs Cobourne to challenge Mr Cobourne's treatment of the entire property as his. Similarly, no one has come forward on behalf of Kenneth Warren's estate to challenge the use by Mrs Warren and her husband of the rent or of their dealing with the subject property.

[44] The Court accepts the submission of Mr Givans that there are significant similarities between the factual circumstances of the authority of **Cobourne** and those which obtain in the present instance. However, the Court finds that there are some points of distinction, based on which it can be said that the factual circumstances of the two cases are different. At paragraph **[41]** of **Cobourne** McDonald-Bishop JA (Ag.) (as she then was) identified the salient points of the appellant's claim for adverse possession. McDonald-Bishop JA is quoted as follows: -

"[41] This was the gravamen of the appellant's pleaded case that he had acquired the property by adverse possession as extrapolated from the particulars of claim:

(a) When the parties migrated to the USA in 2001, the property was rented to a tenant (paragraph 6).

(b) On 13 June 2001, the respondent executed the power of attorney and the written authority. By those documents, she granted the appellant the power to sell the property, among other things, and directed that the appellant should pay her the sum of \$100,000.00 with interest at 12% per annum from 15 February 2000 to the date of payment, as the

sum representing the value of her entire interest in the property (paragraph 8 and documents GC3 and GC4 annexed).

- (c) In the divorce hearing in the Superior Court of Gwinnett County, Georgia, the respondent testified that there was no marital property to be divided except for a 1997 Dodge Caravan (paragraph 10, GC1 annexed).*
- (d) Before February 2002, the rent was paid into a joint account from which the respondent would withdraw money. In or around February 2002, the appellant closed the joint account and directed that all rental payments should be paid into an account in his sole name (paragraph 11).*
- (e) From February 2000 to the date of the filing of the claim in 2016, the appellant has paid all instalments, which were due under the mortgage; arranged for the letting of the property to various tenants; received all rents from the tenants; arranged for and paid for all repairs necessary to maintain the property; and paid all property taxes (paragraph 12).*
- (f) Between February 2002 and December 2015, the respondent did not (a) visit the property; (b) make any objection to the various acts carried out by the appellant as set out in the preceding paragraph; (c) communicate with the appellant about the property; (d) make any attempt to exercise any purported right of ownership over the property; (e) receive any rent from any tenant of the property; and make any payment relating to the property. She also left no possessions of her own at the property or exercised any right of ownership over it.”*

[45] It is clear from a reading of **Cobourne** that Mrs Cobourne executed a power of attorney, effectively selling what would amount to her interest in the property and testified at a divorce hearing that the only property to be shared between herself and her husband was a 1997 Dodge Caravan. Conversely, Mr Cobourne closed

the joint account which was previously held in his name and that of Mrs Cobourne, and effectively collected rent for his sole benefit; paid all the mortgage instalments and property taxes; let the property to other tenants; and arranged for and paid for all necessary repairs.

- [46]** In the instant case, the Court finds that the documentary evidence reveals that, prior to his death, Cecil Warren was engaged in negotiations with representatives of the Administrator General's Department to purchase the one-half share of Kenneth Warren's estate in the subject property. It is for this reason that the Court is unable to accept the submission that the time of dispossession should be calculated from 15 May 1989. The Court also finds that Cecil Warren remained engaged in negotiations for the purchase of the one-half share of Kenneth Warren's estate in the subject property, up to the time of his [Cecil Warren's] death in 2015.
- [47]** Additionally, the documentary evidence also reveals that Mrs Warren, in her capacity as administratrix of the estate of Cecil Warren, initially communicated a willingness to continue with and conclude the purchase the one-half share of Kenneth Warren's estate in the subject property. This was done by way of a letter dated 29 June 2015, under the hand of her then Attorney-at-Law.
- [48]** Consequently, even if the Court were to find that Mrs Warren has demonstrated sufficient acts of possession, in respect of the subject property, and to the exclusion of the estate of Kenneth Warren, an intention to dispossess is rebutted by the exchange of correspondence between Cecil Warren and Mrs Warren, in her representative capacity, on the one hand and the Administrator General's Department, on the other hand. Mrs Warren is equally unable to meet the legal requirement of an intention to dispossess for twelve (12) continuous years from at least 29 June 2015.
- [49]** On a preponderance of the evidence the Court makes the following findings of fact: -

- a. That the subject property is comprised of all that parcel of land part of Tankerville Pen, in the parish of Saint Andrew, being the land comprised in Certificate of Title registered at Volume 380 Folio 26 of the Register Book of Titles.
- b. That the subject property is located at 214 Mountain View Avenue, Kingston 6, in the parish of Saint Andrew.
- c. That the subject property was acquired by Cecil and Kenneth Warren on or about 10 December 1982. They owned the subject property as tenants-in-common.
- d. That prior to their death, Cecil and Kenneth Warren operated their respective businesses on the subject property, namely, Prudential Services Limited, an accounting and management company, and Ken Warren and Associates, an engineering company.
- e. That there were several other businesses which were operated on the subject property by persons who were tenants of Cecil and Kenneth Warren.
- f. That on 15 May 1989, Kenneth Warren died, intestate and is survived by his widow, Margaret Warren and six (6) children.
- g. That on 2 April 1983, a Grant of Letters of Administration was made to the Administrator General for Jamaica, in respect of the estate of the late Kenneth Warren.
- h. That on 20 May 2015, Cecil Warren died, intestate and on 6 October 2016, Mrs Warren was appointed administratrix of his estate.
- i. That a Notice to Creditors was published in the newspaper, which provided notice that the Administrator General for Jamaica, as the personal representative of the estate of Kenneth Warren, was accepting claims against the said estate.

- j. That a Property Officer visited the subject property on 19 January 1994, to take possession of it, in keeping with the administration of the estate of Kenneth Warren.
- k. That on or about 23 August 1999, the amount of Thirty-Seven Thousand Four Hundred and Seventy Dollars and Twenty-Nine cents (\$37,470.29), was paid to settle the mortgage, on the security of the subject property, to Victoria Mutual Building Society (VMBS).
- l. That, prior to his death, Cecil Warren approached the Administrator General's Department, and remained in negotiations with that Department, with a view to purchase the one-half share of Kenneth Warren's estate in the subject property.
- m. That, in 2015, after the death of Cecil Warren, Mrs Warren, through her then Attorney-at-Law, communicated her intention to continue and conclude the purchase of the one-half share of Kenneth Warren's estate in the subject property. This was done by way of letter dated 29 June 2015.
- n. That there is no evidence of an intention to dispossess, on the part of Cecil Warren or Mrs Warren or of any acts of possession which were carried out by Cecil Warren or Mrs Warren, to exclude Kenneth Warren from his share in the subject property, prior to the death of Kenneth Warren.
- o. That, in the result, after the death of Kenneth Warren, his share in the subject property passed to his estate.
- p. That Mrs Warren has failed to prove, on a preponderance of the evidence, an intention to dispossess or any acts of possession which were carried out by her, whether in her own capacity or in her capacity as administratrix of the estate of Cecil Warren, to exclude Kenneth Warren's estate from his [Kenneth Warren's] share in the subject property.

- q. That the requisite twelve (12) year period to defeat the title of the Administrator General for Jamaica must be reckoned to have begun to run after 29 June 2015.
- r. That Mrs Warren has failed to demonstrate, on a preponderance of the evidence, that she has met the twelve (12) year minimum period required to sufficiently defeat the title of the Administrator General for Jamaica to the share of the estate of Kenneth Warren in the subject property, by way of adverse possession.

[50] On the basis of these findings of fact, the Court is constrained to refuse the Orders sought by way of the Fixed Date Claim Form, which was filed on 1 February 2022.

DISPOSITION

[51] It is hereby ordered as follows: -

1. The Orders sought by way of the Fixed Date Claim Form, which was filed on 1 February 2022, are refused.
2. Costs are awarded to the Defendant against the Claimant and are to be taxed if not sooner agreed.
3. The Defendant's Attorneys-at-Law are to prepare, file and serve these Orders.