

JAMAICA

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO SU2019CV01490

BETWEEN	STEPHEN BABOLAL	1ST CLAIMANT
AND	KHADIAN ST PATRICK BABOLAL	2ND CLAIMANT
AND	CHEVON ST BRIAN NEWMAN	DEFENDANT

(Administrator Ad Litem for the Estate of Urban Newman)

Real Property – Recovery of possession of land – Adverse possession – Whether deceased’s possession of land extinguished the title of the registered owner prior to the exercise of the mortgagee’s power of sale – Whether the purchaser from a mortgagee takes free of an unregistered possessory title – Purchaser in possession – Squatter – Whether agreement for sale in existence- Whether the deceased had the requisite *animus possidendi* where occupation commenced under incomplete agreement for sale – Acknowledgement of title –Burden of proof in a claim for recovery of possession where adverse possession is pleaded – Whether the affidavit in support of a fixed date claim form forms part of the pleadings – Limitation of Actions Act, ss. 3, 16 and 30 – Registration of Titles Act, ss. 68 and 70 – Civil Procedure Rules, rr. 8.9(1) and 8.9A.

Clive Munroe Jr instructed by Munroe & Munroe for the claimants

Ruel Woolcock instructed by Ruel Woolcock & Co for the defendant

Dates Heard: October 14, 2025, November 27, 2025, November 28, 2025 and May 8, 2026.

K. Henry Anderson J (Acting)

Background of the claim

[1] This is a claim for recovery of possession of property located at 2 Cassia Park Road, Kingston 10, in the parish of Saint Andrew, being all the land contained in the Certificate of Title registered at Volume 1095 Folio 631 of the Register Book of Titles (hereinafter referred to as ‘the subject property’).

[2] The claimants purchased the subject property from the Jamaica Redevelopment Foundation Inc ('JRFI'), the mortgagee, pursuant to its exercise of a power of sale. JRFI's interest derived from a mortgage that had been transferred to it. This transfer was registered on the title for the subject property in October 2003.

[3] The title holder of the property at the time of the sale to the claimants was one Bruce Silvera, who became the registered owner on 3 December 1991, at which time the registered mortgage holder was Jamaica Citizens Trust and Merchant Bank Limited (the name of which was later changed to Citizens Merchant Bank Limited).

[4] The defendant Urban Newman, who was in actual possession at the time the claim was filed, filed a Defence contending that the claimants were barred from recovering possession of the property, as he had been in possession of it for a continuous period in excess of 12 years by the time of the filing of the claim, without the permission and consent of the claimants' predecessor in title, and had thereby acquired a possessory title pursuant to sections 3 and or 30 of the Limitation of Actions Act ('LOAA').

[5] It was based on this Defence that the matter, which had been originally filed in the Parish Court, was transferred to the Supreme Court for hearing.

[6] At the Case Management Conference on 2 October 2019, orders were made for the claim to be treated as a fixed date claim form proceedings, and the parties were therefore required to file all affidavit evidence that they intended to rely on for the purposes of the claim by 30 November 2022.

[7] However, on 19 March 2023, prior to the filing of the affidavit evidence by the parties, Urban Newman died. His son, Chevon St Brian Newman, was thereafter appointed personal representative of his estate for the purpose of these proceedings on 7 July 2025.

[8] An extension of time was granted to the parties to comply with the case management conference orders, after which both parties filed their respective affidavits. An affidavit of Khadian St Patrick Babolal was filed for the claimants, and an affidavit and further affidavit of Chevon St Brian Newman, along with an affidavit of Paul Newman,

were filed for the defendant. At the trial of the claim, the affidavits of all three witnesses were treated as their evidence in chief, and they were all present for cross-examination. A summary of the key aspects of their evidence is presented below.

The claimants' case

Khadian St Patrick Babolal

Examination in chief

[9] The claimants' evidence was largely contained within the affidavit of Khadian Babolal. He stated that he and his brother, Stephen Babolal, are the registered proprietors of the subject property, and that it was sold to them by JRFI for the purchase price of fourteen million dollars (\$14 million) pursuant to its exercise of a power of sale contained within a mortgage registered on the title.

[10] He stated that the transfer of their interest was registered on the title on 26 February 2016, and that shortly thereafter they commenced a suit for recovery of possession against the defendant in the Parish Court, which was later transferred to the Supreme Court. He further stated that, despite the filing of this suit from 2016, they have still not been able to access the property and realise the fruits of their investment.

[11] In support of their claim, the claimants exhibited the certificate of title for the subject property, as well as, a letter dated 22 July 1999 signed by Garth Lyttle, attorney-at-law, who at the time indicated that he was acting on behalf of the (now deceased) defendant Urban Newman. The correspondence, addressed to the then mortgagee, Citizens Merchant Bank Limited, related in summary the following key points:

- (i) the history of how Urban Newman came into possession of the property, that is, via purchase of the property from Bruce Silvera in the sum of \$1 million cash;
- (ii) that despite Mr Newman paying the full purchase price and legal costs, and despite all his best efforts, he was still unable to obtain the title from the vendor and his attorney;

(iii) that since Mr Newman's acquisition of the premises, he had spent a great deal of money on the property doing extensive repairs; and

(iv) that Mr Newman had now come to understand that the premises had been put up for auction, and in the circumstances was therefore seeking further details as to the amount still owing on the mortgage, as he was interested in settling the account so that he could redeem the title.

[12] The claimant further stated that he was advised, and believed, that this letter was an acknowledgement by the defendant of the rights of the then mortgagee of the property, and that it was this mortgage that was later transferred to JRFI, who sold the property to the claimants.

Cross-examination

[13] Counsel for the defendant sought to make it clear that the claimants, at the time of purchase of the subject property, had little or no knowledge of the actual goings-on at the property. It was established that the 2nd claimant became aware of the property being available for sale, having seen it listed for sale online, and had, prior to the actual purchase, never gone onto the property itself, but had only driven by.

[14] With respect to the issue of whether the 2nd claimant was aware of anyone being physically in possession of the premises at the time of purchase, he stated that he had not seen anyone there, but had seen the building locked up with some metal in the yard.

[15] When asked by counsel if he had asked the persons who had advertised the property whether there was anyone occupying the property, he stated that he was advised by the mortgage company that he would have to use his lawyer to get possession of the place.

The defendant's case

Chevon St Brian Newman

Examination in chief

[16] Chevon Newman, at the time of swearing his affidavit on 16 July 2025 was 37 years of age. He stated that he had not lived with his father growing up, except for a year when he lived with him at his dwelling house at Richings Avenue, but that he had a good relationship with him, as his father had provided for him financially and spent a great deal of time with him during his childhood.

[17] He noted that he was introduced to the subject property by his father when he was about eight or nine years old, that being the time he was first taken there. He made numerous visits thereafter over the years, and during these visits he realised that several persons occupied varying sections of the building as tenants, and that they spoke to and related to his father as if he were the owner. He also saw his father collecting money from them, which his father told him, and which he believed, was rent. During this time, he knew of a bar, a jerk spot and a hairdressing parlour operating from the premises.

[18] He also saw his father invest money in the maintenance and upkeep of the premises, and at one time, his father constructed a fence separating his portion of the property from his brother's. He further stated that his father had allowed a cousin of his, Paul Newman, to reside at the property for over 20 years.

[19] He further indicated in his evidence that his father had made him aware of how he had come into possession of the property. That is, by making a substantial down payment of the purchase price from the 1990s. However, the lawyers who were handling the matter disappeared before the purchase could be completed, and so he went into possession with the intent to possess it as his own.

[20] He had also been informed by his father that the bank which had a mortgage endorsed on the title from the previous owner was attempting to sell the property and, in an attempt to get his name on the title, his father had contacted Mr Garth Lyttle, attorney-at-law, to pay the outstanding money to the bank. He referred in his testimony to the said

letter of Garth Lyttle, which had been exhibited to the affidavit of the 2nd claimant, and which was also exhibited to his own affidavit. He further stated that he was informed by his father that he had paid off the amount due to the bank to remove the property from being sold by auction.

[21] Chevon Newman also stated that, for all intents and purposes, his father was the lawful owner of the property until his death on 19 March 2023, and that the property therefore belonged to his father's estate. He exhibited, in proof of his father's death, a copy of his death certificate.

[22] To his second affidavit, he exhibited a statutory declaration of his father, Urban Newman, made on 1 March 2019, which in essence stated that:

- (i) the deceased had entered and taken possession of the property in or about October 1992 pursuant to an agreement for sale made with the law firm of Silvera and Silvera, who stated that they had the authority to sell the property. By then he had paid over \$350,000 of the \$450,000 purchase price, and was to pay over the balance when the title was ready, but up until the end of 1993 no title was forthcoming;
- (ii) he had lived there for 24 continuous years, unmolested, and treated it as if it was his own, and had spent considerable sums upgrading and improving the house; and
- (iii) it was not until sometime in 2016 that he came to know someone by the name of Stephen Babolal, when Mr Babolal came to the gate of the property and informed him that he had bought it from the mortgagee, JRFI. He, in response, had told Mr Babolal that he was in fact the owner of the property and that his interest could not be defeated by any sale, as he had been in unmolested, continuous and open possession of the property for a period of time well in excess of 12 years, and therefore any purported disposition of the property must be subject to the rights he had acquired by the passage of time.

Cross examination

[23] The defendant accepted, in answer to questions from learned counsel for the claimants, that:

- (i) his father was not on the property as a squatter, but was there pursuant to an uncompleted purchase from Mr Silvera;
- (ii) paragraphs 2 and 3 of the statutory declaration of his father, exhibited to his second affidavit, were consistent with his father occupying the property as a purchaser in possession; and
- (iii) he could not in fact say if any payment was made by his father to the bank to settle the amounts outstanding on the mortgage, even though his father had told him that he had paid it, as he had no receipt in proof of that payment.

Paul Newman

Examination in chief

[24] The deceased's nephew, Paul Newman, also testified, and stated in summary that he had known the property from 1994, when his uncle Urban Newman gave him permission to live there. He also stated that, to his knowledge, his uncle came there to collect rent from tenants, and to do upkeep and maintenance of the property. He further stated that he knew of a bar, a jerk centre and several hairdressers operating from the premises, and that all the tenants paid rent to his uncle.

[25] He was also aware of his uncle making significant upgrades to the property, including the construction of a concrete boundary fence.

Cross examination

[26] Under cross-examination, he admitted that he was not aware of how his uncle came to possess the property, as his uncle had been in possession before he came there.

Submissions

Claimants' submissions

[27] The ultimate issue for the court, as articulated by the claimants, is whether the mortgage was valid at the time that JRFI transferred the property to the claimants pursuant to its power of sale, as, if the answer is no, it is submitted that that is the end of the matter and the claim fails.

[28] Counsel submitted that, in order for the court to determine if the mortgage is valid, it has to consider whether the predecessor's title, at the time the power of sale had been exercised, had been extinguished by the deceased by adverse possession or, whether the limitation defence of adverse possession is available to the defendant in this matter, at all?

Adverse possession

[29] It is the submission of the claimants that this defence of adverse possession is not available to the defendant, for the following reasons.

[30] Firstly, the claimants argued that adverse possession requires the defendant to establish that the deceased had both the acts of possession and the intention to possess, citing the authority of **Sharon Timoll et al v Lester Watts and anor** [2021] JMCA Civ 1 in support, and that, in particular, when one looks at the facts of this case, though the acts of possession are not disputed, on the defendant's own evidence, it could be seen that the deceased did not possess the intention to possess or the *animus possidendi*.

[31] The claimants based this argument on the fact that the deceased, on entering into possession of the subject property, was a purchaser in possession and licensee, not a squatter, and that for the defendant to succeed on the basis of adverse possession, the deceased who was in possession, must have been a squatter.

[32] Counsel also noted that the defendant's argument that the deceased was a purchaser in possession, and was therefore seeking to obtain title from Bruce Silvera, the vendor and paper owner under the contract of sale, could not be reconciled with the

position that the said Bruce Silvera no longer had title, as he had been dispossessed of it by the deceased.

[33] Counsel also argued that, in the context of limitation by adverse possession, the intention to possess by the occupier is inextricably linked to the factual possession itself. That is, the intention to possess must be an intention to possess the land for oneself, to the exclusion of everyone, including the owner, consequently resulting in the extinguishment of the owner's title. However, the very nature of the purchaser in possession's occupation of premises is inconsistent with such an intention, as the occupier in those circumstances is let into possession by the permission of the owner and remains there subject to the agreement of the registered proprietor. That is, he was holding under a licence from the vendor, which could not be revoked until he was in default under the agreement. He cited the case of **Bramwell v Gordon** (1957) 7 JLR. Counsel therefore argued that the very nature of such a possession cannot be said to be done to the exclusion of the owner, as the occupier is there at the behest of the owner. Even if the defendant could be said to have been there as a tenant at will, he would have been occupying the property subject to the agreement with the registered proprietor.

Effect of the letter to the mortgagee

[34] Counsel further submitted that the letter of Garth Lyttle, attorney-at-law, dated 22 July 1999, to the mortgagee on behalf of the deceased, is critical to this case as:

- (i) it serves as an acknowledgement in writing by the deceased of the title holder as owner, and pursuant to section 16 of the LOAA time starts to run, when calculating the limitation period, from the date of this acknowledgement, not from the date of entry into possession. As such, on the facts of this case, though the deceased entered into possession in 1992, the acknowledgement in writing was not until July 1999, and it was therefore from that point that time began to run; and
- (ii) further, there was no evidence from the defendant to point to the deceased having commenced possession with the intent to defeat the title of the registered proprietor after 22 July 1999, the date of the letter. In fact, it seems

that after that date the deceased's position, as seen by the evidence of his son, was that any title he possessed was, in his view, subject to the mortgagee's power of sale over the property, and that that belief continued up to his death

[35] Counsel also advanced the argument that not only did the deceased acknowledge the mortgagee in writing, but that he also continued to acknowledge the greater right of the mortgagee to exercise its power of sale in relation to the subject property. As his son stated in his evidence, as far as he was aware his father had paid off the sum owed to the mortgagee referred to in the letter (which was seemingly a view he held in error, as in cross-examination he agreed that he had no proof that his father had satisfied the outstanding mortgage sum), and that this had therefore cleared the way for him to obtain the legal title.

[36] Counsel for the claimants therefore submitted, in conclusion of his arguments, that JRFI's power of sale contained in the mortgage was valid at the time of sale and transfer of the property to the claimants.

Defendant's submissions

Legal framework: ROTA and LOAA

[37] The defendant in his submissions helpfully traced the law on adverse possession, stating that the beginning of the court's analysis of the law should commence with sections 68 and 70 of the Registration of Titles Act ('ROTA'), which provide that the registered title is indefeasible, save in the case of fraud and subject to any statutory limitation.

[38] The relevant statutory limitations cited by counsel, which are being used as a shield by the defendant, are contained within sections 3 and 30 of the LOAA.

Section 3 states that:

"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.”

And the related section 30 states that:

“At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished.”

[39] Counsel then highlighted the fact that the Privy Council in two authorities from Jamaica, that is **James Clinton Chisholm v James Hall** [1959] UKPC 15 (**‘Chisholm’**) and following almost 60 years later the case of **Recreational Holdings 1 (Jamaica) Ltd (Appellant) v Lazarus (Respondent) (Jamaica)** [2016] UKPC 22 (**‘Recreational Holdings’**) explained that the effect of the limitation exception in the above sections, is such, that it acts even as a shield against a bona fide purchaser for value without notice. That is, that the registered owner who purchases land or to whom land is transferred takes it subject to any possessory title acquired by a third-party.

[40] However, counsel acknowledged that for the third-party’s interest to rise to the level of a possessory title, the provisions of sections 3 and 30 of the LOAA must be at play. That is, section 3 bars an action of right to entry or right for recovery of possession by the title holder after the passage of 12 years while section 30 operates to extinguish the rights of the title holder after the 12 years.

[41] It was submitted by counsel that in both the cases of **Chisholm** and **Recreational Holdings**, the court found, that the title holder that had derived title from a registered owner that had previously been dispossessed by the possessor of the property in dispute, was barred from recovery of possession. This was because the former title holder’s title had been extinguished, as a title by possession had been created in favour of the person in possession.

[42] Counsel then sought to outline the issues in this case, considering the law, as earlier propounded. That is, whether the law in **Chisholm** and **Recreational Holdings** concerning section 70 of the ROTA extended to cases in which the registered owner derives his interest not from his predecessor but from the predecessor's mortgagee?

[43] The answer to this question, counsel submitted, must be in the affirmative. That is, once the title holder's interest has been extinguished by the actions of the dispossessor, the mortgagee, like the registered owner, must be equally disqualified from transferring that interest. Counsel cited in support the case of **Dagor Ltd v MSB Ltd and National Commercial Bank Jamaica Limited** [2015] JMSC Civ 242 where at paragraph 12 of the judgment, Batts J stated that:

“Actions to recover possession whether by the mortgagee or purchasers from the mortgagee may be met with any applicable limitation defence. In this regard the mortgagee seeking possession is in law, in no better possession than for example one joint owner claiming possession against another. The limitation bar it has been held applies in such circumstances see *Wills v Wills* [2003] UKPC 84. A mortgagor in possession for the requisite 12-year period, in circumstances where the mortgagee's right to possession has accrued, is entitled to rely on sections 3 and 7 of the Limitation of Actions Act. It therefore behoves purchasers of land to enquire as to the status of those in possession, and it matters not whether the land is purchased from a mortgagee. The possessory title can defeat the title of the registered owner and hence his ability to give a valid title.....”.

[44] Counsel then went on to look at the effect, if any, on the deceased's ability to obtain a possessory title despite the transfer or creation of various mortgages over the land by the current registered proprietor, with the specific issue under consideration being, whether the passage of time for the purposes of the LOAA is interrupted by the transfer or creation of new mortgages.

[45] Counsel indicated that the answer to that is in the negative, that is, that the creation and transfer of mortgages did not operate to restart the limitation clock. He cited in support the case of **Peter Perry v Carol Baugh et al** [2018] JMCA Civ 12 ('Peter

Perry') where Brooks JA (as he then was) stated, at paragraph 22 in response to the arguments advanced by the appellants that the creation of new mortgages operated to restart the limitation clock and hence sufficient time had not elapsed to succeed in a limitation defence, that:

“ it was entirely possible, ... for the respondents to acquire a possessory title despite Mr Hill granting mortgages of the property from time to time. It was for the bank to investigate whether there was any possessory title or other interest being created which would have affected its interest.”

Burden of Proof

[46] Counsel then went on to indicate that the burden of proof in a case where the defendant pleads a limitation defence in an action by a claimant for recovery of possession, lies on the claimant. Counsel stated that it is for the claimant in such a case to show that his title has not been extinguished by the statute and not for the defendant to demonstrate that he falls within the boundaries and remits of the act. He cited in support the authority of **Winnifred Fullwood v Paulette Curchar** [2015] JMCA Civ 37 (**'Curchar'**). Counsel referenced paragraph 39 of the judgment where the learned McDonald Bishop JA (as she then was) stated that:

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

Letter to the mortgagee and the status of the deceased, that is, being a purchaser in possession and not a squatter

[47] Counsel for the defendant then went on to look at the effect of the letter by Mr Garth Lyttle to the mortgagee and the claimants' argument that the deceased Urban Newman was a purchaser in possession and not a squatter. Here counsel stated two things:

- (i) that the claimants' argument in their submissions and questions to the defence witness of the fact that the deceased was not a squatter in possession but instead a purchaser in possession was inconsistent with their pleadings and
- (ii) the fact of the letter to the mortgagee being now deemed an acknowledgment by the deceased of the rights of the mortgagee prior to the sale to JRFI and then in turn sale to the claimants was never part of the claimants' pleaded case.

[48] As such, counsel argued that the claimants should not be permitted to rely on either of these two pieces of evidence or the arguments which they are putting forward based on this evidence as they had not sought permission to do so pursuant to the rules. Counsel here relied on rule 8.9 of the Civil Procedure Rules ('CPR') in support of this point and the authorities of **Grace Kennedy Remittance Services Ltd v Paymaster (Jamaica) Ltd and Paul Lowe** Supreme Court Civil Appeal No. 5/2009, ('**Grace Kennedy**') **Jascinth Davis v Delroy Reid and Topenga Properties (Jamaica) Limited** [2025] JMSC Civ. 97 ('**Jascinth Davis**') and **Vinnett White and Sandra Brown and anor** [2021] JMSC Civ.151 (**Vinnett White**).

[49] Counsel further stated that even, if they are wrong on this issue and the claimants are permitted to rely on the above evidence and factual arguments, it would still not be sufficient to discharge their legal burden. He began firstly with the letter, by stating that the letter in question does not amount to an acknowledgment which results in a resetting of the limitation clock such as to destroy the deceased's ability to extinguish the title of the claimants' predecessor, for the following reasons, that is:

- (i) The letter was not addressed to the title holder at the material time, that is, Bruce Silvera but instead to the mortgagee and
- (ii) The letter was not signed by the possessor, but rather by an attorney-at-law

As such counsel argued, the letter would therefore not have fulfilled or satisfied two requirements of an acknowledgment as stated in section 16 of the ROTA.

[50] One must note as well, counsel stated, that even if one were to give a generous interpretation to the letter and accord it the status of an acknowledgment falling within the definition of such in section 16 of the ROTA, the most that would occur here based on the authority of **Milton Hugh Taylor v Winston Thompson** [2024] JMCA Civ 7 is a recommencement of the limitation clock, and in the circumstances of this case, all that would mean, is that the clock would restart at the time of the letter in 1999. That would mean that the deceased's possession would have gone uninterrupted for another 12 years to 2011 and as such, would still have resulted in an extinguishment of the title of Bruce Silvera long before the sale of the subject property to the claimants in 2016.

Purchaser in possession

[51] Regarding the purchaser in possession argument being put forward by the claimants, counsel for the defendant argued that the authorities indicate that the status of a purchaser in possession is dependent on the intention of the parties at the time of possession, as there are some authorities where a tenancy at will was found to be created and in others a licence. Counsel cited here the authority of **New Falmouth Resorts Limited v International Hotels Jamaica Limited** [2011] JMCA Civ 10 ('**New Falmouth**'). He argued that one of the relevant factors that the court would look at, was the terms of the agreement putting the purchaser into possession.

[52] Counsel went on to argue, that in this case, the court could not possibly decide either way what was created, that is, whether it was a tenancy or licence, given that no written agreement for sale was ever presented to the court nor were there clear circumstances of how the deceased came to be let into possession under or pursuant to this agreement. Counsel further argued, that the court cannot determine the intention of the parties regarding the status of the deceased when he went into possession and the intention is important as if he were a tenant at will then according to section 9 of the LOAA, that tenancy would have automatically expired within a year following creation, and would therefore have entitled the claimants' predecessor in title to have re-entered sometime in or around 1993.

[53] There is also, counsel noted, no evidence of the fact that the owner Bruce Silvera was even aware of the sale or the deposit being paid pursuant to it, as it was disclosed in the deceased's statutory declaration that it was paid over to Silvera and Silvera, a law firm and that he was later informed that there was some concerns about impropriety concerning the firm leading to it being disbanded and so there is a real possibility that the actual owner of the property was not even aware of the transaction to sell it. Nor was there any direct evidence of any binding agreement to sell, as was the case in **New Falmouth**.

[54] In support of the above point, counsel also cited the case of **Christopher Wood v Maria Grant et al** [2023] JMSC Civ.202 (**Christopher Wood**) where the court had found that in light of an earlier finding that there was no valid agreement for sale in existence between the parties in the case before him, it was clearly distinguishable from a case when the buyer was let into possession pursuant to such an agreement. In the latter case, the judge stated, that the purchaser in possession would have been a licensee until the contract was rescinded under which the licence was given, and it would operate as a bar to the purchaser in possession from claiming adverse possession.

[55] Counsel therefore argued that in absence of a sale agreement being produced to the court or evidence that there was even such a sale agreement the claimants were legally unable to demonstrate that the deceased was a purchaser in possession and that their predecessor in title was not dispossessed by the operation of the LOAA.

Discussion and analysis

Burden of proof and the applicable law

[56] The starting point of the court's analysis must be: where does the burden of proof lie in a claim of this nature for recovery of possession where the defendant has raised sections 3 and 30 of the LOAA as a defence to the claim.

[57] This court is of the view that, to determine that, one must look at the legal and evidential interplay that exists between section 68 of the ROTA and sections 3 and 30 of the LOAA.

[58] Section 68 of the ROTA, states that:

"No certificate of title registered and granted under this Act shall be impeached or defeasible by reason or on account of any informality or irregularity in the application for the same, ... 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."

[59] This section shows that the owner of land with the paper title is deemed to be the proprietor in possession and therefore can bring a successful action against an occupant of the premises for recovery of possession. I am therefore of the view, that once the registered title is produced to the court, it is conclusive evidence that the person who is named on the title as proprietor, having the estate or interest in the property, is seised or possessed of that estate or interest, subject to subsequent operation of any statute of limitations, with the relevant sections, in this case, being sections 3 and 30 of the LOAA.

[60] Section 3 of the LOAA provides that:

"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." (emphasis supplied)

And the related section 30 states that:

"At the determination of the period limited by this Part to any person for making an entry, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished."

[61] Section 3, as counsel for the defendant stated, acts as a bar to the titleholder. It prevents the bringing of an action for recovery of the land if more than 12 years have passed after the right to take such an action has accrued. Section 30 states the reason for the bar, which is, that once the time has passed to bring the action, and the title holder has failed to do so, the right and title of the title holder is extinguished. In essence, the title holder would have no *locus standi* or standing to bring the claim, as he has lost his title to the adverse possessor.

[62] In light of those observations on the relevant sections, I will now go on to consider the parties' arguments on the issue of burden of proof. The claimants assert that the defendant has pleaded the special defence of adverse possession and so he must prove it; the defendant, on the other hand, contends that, according to the authorities, and in particular the authority of **Curchar**, it is the claimants who have to prove that they still have a valid title not extinguished by the adverse possessor, and so no burden lies on the defendant or adverse possessor.

[63] I am of the view that both parties in a claim of this nature have a burden of proof. Although I am in agreement with counsel for the defendant that the claimants maintain the legal burden of proof throughout (that is, that they have to prove that they have a title that has not been extinguished by the operation of the statute of limitations, as is seen in paragraphs 38 and 39 of **Curchar**) in order to successfully recover the property in question. I am also of the view that, in a claim for recovery of possession, the defendant too has a burden, that is an evidential one, once he pleads the defence of adverse possession pursuant to sections 3 and 30 of the LOAA.

[64] This view is based on the fact that, for sections 3 and 30 to become operative, that is, for the title holder's rights to be extinguished by the person from whom he is seeking to recover possession, it must be shown to the court that the adverse possessor has been in actual possession for 12 years, and that he must have had, at the time of possession, the required *animus possidendi* or intent to possess.

[65] This would therefore mean that there must be some evidence before the court capable of establishing these two elements, and in practical terms, this could generally

only be expected to come from the adverse possessor (noting that in certain instances it may also come from the claimant's own evidence as well) and or the witnesses called on his behalf. This was a point clearly recognised by the Court of Appeal in **Peter Perry**, where Brooks JA (as he then was) stated at paragraph 17 of the judgment that:

“A person who wishes to rely on s 3 and 30 of the Limitation Act *must show that they have been in open and undisturbed possession of the land for the period of 12 years and that they intended to occupy the land for their own use...*”

[66] However, once that has been established evidentially, that is, that there is a *prima facie* case in support of the limitation defence that has been placed before the court, for its consideration, the legal burden which never shifts, still rests on the claimants to show that their title has not been extinguished.

[67] Now, having settled the issue as to where the burden of proof lies in this case, I will now go on to consider the other major issues highlighted by the parties in their submissions.

[68] Two critical issues raised by both counsel in their submissions are:

- (i) What is the effect of the letter to the mortgagee; and
- (ii) What is the status of the deceased, adverse possessor, at the time of possession: was he a purchaser in possession or a squatter?

[69] As stated earlier in this judgment, counsel for the defendant argued that the claimants should not be permitted to rely on either the letter or the arguments which they are putting forward based on the letter. This was submitted on the basis that the issue of the deceased being a purchaser in possession had not formed part of the claimants' pleadings, as it was not contained within their Further Amended Particulars of Claim where the deceased was described as a squatter. The claimants' evidence and argument now being advanced is therefore inconsistent with the pleadings and no permission was sought to amend their statements of case as required by the rules, thereby permitting

them to rely on it. Counsel here relies on rules 8.9(1) and 8.9A of the CPR and the authorities of **Grace Kennedy**, **Jascinth Davis** and **Vinnett White**.

[70] I must state here, that I cannot agree with the defendant's line of reasoning on this point, for the following reason. Although the matter originated in the Parish Court and was therefore commenced by the filing of a Plaintiff Note and Particulars of Claim (which were later amended), once it had been transferred to the Supreme Court, the case was ordered to be treated as if commenced by way of a Fixed Date Claim Form. The effect of this order was that the claimants' affidavit filed in support of the claim, though it constituted evidence in the proceedings, also had the dual role of being a part of the claimants' pleadings, a point that was clearly made in a recent judgment from the Court of Appeal, in the case of **Wayne Robinson v Basil Jarrett** [2025] JMCA Civ 8, where G Fraser JA (Ag) (as she then was) stated at paragraph 37 that:

“The Fixed Date Claim Form and Affidavit filed by the appellant would represent his pleadings and evidence in support of the claim; the takeaway from the **Sally Fulton v Chas E Ramson** case is that in a striking-out application utilising a fixed-date claim form, as in this case, it would not be wrong for the judge to utilise affidavit evidence.
...”

[71] The effect of this pronouncement on the law is that the claimants, by including that evidence in their Affidavit in Support of the Fixed Date Claim Form, although it was not in their Further Amended Plaintiff Note and Further Amended Particulars of Claim (which would have been the pleadings in claim form proceedings), had still included it within their pleadings in this proceeding, and so it did not strictly speaking fall afoul of rule 8.9(1), and as such, rule 8.9A would not be applicable. Secondly, the fact that there is a clear inconsistency in the position originally advanced in the Further Amended Particulars of Claim of the deceased being a squatter, and the position stated in the 2nd claimant's affidavit in support and the claimants' counsel's submissions of the deceased being a purchaser in possession, is not a bar to the latter being relied on, but instead goes to the credibility of the claimants' case. Thus, the court is left at liberty to consider the evidence and arguments advanced in their totality and to give them such weight as it deems fit.

Status of the deceased – purchaser in possession

[72] Now, the next issue the court must address is the effect of this evidence on the claimants' case, in particular the issue raised by the claimants of the deceased being a purchaser in possession.

[73] I must say, at this juncture, that I agree fully with defence counsel's observations on the evidence on this point, that is, that the court could not really give much weight, if any, to it, for the following reasons:

- i) The court cannot really determine from the evidence what were the circumstances under which Urban Newman, the deceased entered into possession; that is, did he enter into possession pursuant to an agreement for sale, as although an agreement was referred to, no written agreement has been tendered into evidence;
- ii) There is no evidence that the vendor had let the deceased into possession or was even aware of the fact that he was in possession and had permitted him to remain, which is the basis of the claimants' claim that the deceased was living there based on a licence; and
- iii) There is also no evidence that the owner, that is, the claimants' predecessor in title, Bruce Silvera, was even aware of an agreement to sell the subject property, or that a deposit was being paid pursuant to such an agreement. Nor is there any conclusive evidence that the law firm of Silvera and Silvera was in fact acting on his behalf. As counsel for the defendant correctly stated, when one looks at the evidence, it shows that any sum that was paid over by the deceased, whether it be the deposit or full price, was paid over to the law firm which had carriage of sale, and there is no proof that it was ever thereafter paid over to Mr Silvera, the predecessor in title. This is, of course, further compounded by the fact that the deceased later learnt that there were some concerns about impropriety concerning the law firm which had carriage of sale, after which it was later disbanded.

[74] I am therefore of the view that there is insufficient evidence upon which this court can properly make a finding that the deceased entered into possession and remained in possession of the subject property as a purchaser in possession.

[75] The effect of this finding is that the court would have to revert to what I consider to be the default position of the claimants, stated in the Further Amended Particulars of Claim, that is, that the deceased was on the property as a squatter, and that it was on that basis, that they were seeking recovery of possession.

[76] Even if this court were in error as to the issue of whether the deceased was to be treated as a purchaser in possession rather than a squatter for the purposes of his defence of adverse possession, the position of the court over the years has been clear. That is, that although one may start out as a purchaser in possession, it does not mean that one cannot successfully mount a defence of adverse possession under sections 3 and 30 of the LOAA.

[77] The defendant's counsel submitted this very view to the court, stating that these acts by the deceased, even if he were determined to be a purchaser in possession, can provide the necessary evidence of possession for adverse possession. He cited in support of this argument, the authority of **Christopher Wood v Maria Grant et al** [2023] JMSC Civ 202 where D Staple J (Ag) (as he then was), in an application for an injunction to restrain the Registrar of Titles from declaring the defendant the owner of the subject property, refused the application, as he found that there was no serious issue to be tried. The learned judge made this finding on the basis that the defendant's defence of adverse possession against the claimant's substantive claim for a declaration was likely to be successful on the facts as presented.

[78] In that case, the defendant had entered into possession of the premises via an agreement for sale of land that had never subsequently been completed, and so no title was passed to the defendant. However, it was not disputed that the defendant was let into possession by the claimant (who was the title holder), paid taxes and utilities, collected rents, and generally did all the acts of an owner. She did them without reference to the owner, for her own benefit, and openly and undisturbed for over 12 years.

[79] The court in determining the application in favour of the defendant found favour with counsel's argument, which is somewhat similar to that being advanced by the defendant's counsel here, that although the defendant at the time she entered into possession may have been correctly described as a purchaser in possession, and was therefore clearly aware that there was a lawful title holder, that was not the central issue for a court in determining whether her acts of possession were sufficient in a case of adverse possession. The central issue, counsel had argued, was the intention of the possessor at the time, and so the only intent for which the court should look when making a determination on this issue was whether the party had the intent to possess the land for themselves, for their own benefit, to the exclusion of all others, including the title holder.

[80] The defendant's counsel in the case of **Christopher Wood** relied on the authority of **Jennifer Dixon (Administrator Ad Litem of the Estate of Barrington Dixon, Deceased) v Angella Runte et al** [2017] JMSC Civ 114, which applied the House of Lords case of **J A Pye (Oxford) Ltd and another v Graham and another** [2002] UKHL 30 ('Pye').

[81] In that case, the deceased purchaser, Mr Barrington Dixon, had sought to purchase a piece of land from the defendants who were the vendors. He had signed an agreement for sale and paid a deposit pursuant to the agreement, after which he went into possession from 1986 pursuant to the agreement. He made mortgage payments, paid taxes, demolished the vendors' fence and constructed a new fence on the property. However, despite repeated attempts by him to have the defendants complete the sale, by even offering to pay the rest of the purchase price, for varying reasons they refused to do so. This resulted in him filing a second claim in the Supreme Court in 2007, seeking several reliefs including, as an alternative to specific performance of the agreement for sale, a declaration that the claimant is entitled to the land by virtue of adverse possession.

[82] It was that matter which was before the court for its determination when Morrison J stated, as it related to the issue of adverse possession and the effect of Mr Dixon having initially entered into possession as purchaser in possession, at paragraphs 154 and 155 that:

“[154] ... In order for Dr. Dixon to succeed under adverse possession, it is irrelevant that he was first let into possession under some agreement with the owner. Had the agreement subsequently lapsed, but he nevertheless continued in possession without any interference from the owner, then, his possession would be adverse to that of the owner’s title.

[155] Further, the fact that Dr. Dixon was willing to and even offered to make payments during the period, does not in any way serve to defeat the accrual of his right in law.”

[83] The court then referred to the case of **Pye**, where, after outlining a summary of the facts, it referred to a portion of the judgment in which, in giving judgment for the defendant, the court held, *inter alia*, that:

“... an offer made by a squatter to an owner to pay rent or take a tenancy is an acknowledgement of the owner’s right to require the squatter to vacate the land (if the limitation period is still running), but it is not inherently inconsistent with the squatter being in actual possession of the land, or with the squatter having the requisite *animus possidendi*. Once any licence under which a squatter has occupation expires, if the squatter remains in occupation, his possession is capable of being ‘adverse’. The mere fact that a squatter communicates his preparedness to take a licence does not by and of itself, prevent time running in the squatter’s favour. However, that fact may assist an owner whose contention is that the squatter did not have the requisite *animus possidendi* at and around the time the request was made. ...”

Adverse possession

[84] This then gives rise to the central issue raised by the defendant’s Defence, which is whether Urban Newman dispossessed Bruce Silvera of his title prior to the purchase from JRFI under the power of sale and transfer to the claimants in 2016.

[85] This now requires the court to look at the law on adverse possession and the evidence tendered by the defendant in support of his defence.

[86] When one looks at what constitutes adverse possession, it must be shown that there are two key elements, that is:

- (a) **factual possession** – which is a sufficient degree of physical custody and control over the property in question; and
- (b) **the requisite intent to possess** – that is the intention to exercise custody and control over the property on one's own behalf and for one's own benefit (the *animus possidendi*).

[87] From the evidence presented, the factual possession and the deceased's intent to possess are really not in question, as the largely uncontroverted evidence of the defendant's witnesses, which includes the declaration of the deceased that was exhibited, shows:

- (a) that the deceased had physical control over the property from as far back as October 1992, when he went into possession, and this is supported by the evidence of his nephew, Paul Newman, to the extent that he was allowed to remain at the property from 1994 by the deceased, so that by the time of the transfer in 2016 the deceased would have had control over the property for approximately 23 years;
- (b) that, although the deceased did not reside at the premises, clear evidence of the degree of physical custody and control by the deceased of the premises can be seen from the evidence of both his son and Paul Newman, his nephew, where they stated that he was involved in the fixing up of the premises, collected rent from a number of tenants, and even allowed his nephew to reside at the premises for over 20 years by the time of the sale; and
- (c) that, at the time that he exercised control over the property, he did so to the exclusion of all others, including the paper title holder, Bruce Silvera.

[88] And, of course, the court notes here as well that there is no evidence that the owner, Bruce Silvera, or anyone on his behalf, sought to interrupt the deceased's custody and control of the property during this 23-year period of possession. The defendant has therefore discharged his evidential burden of proof, and the legal burden therefore rests squarely on the shoulders of the claimants to show that the paper title holder's interest,

as well as the equitable interest of the mortgagee, were not defeated by the actions of the deceased prior to the sale of the subject property to them.

Effect of the existing mortgage on the issue of adverse possession

[89] To discharge this burden, several legal issues were raised by the claimants, one of which was an invitation to the court to consider the effect of the mortgage being present when the agreement for sale was entered into between the deceased and Bruce Silvera. It was submitted by counsel for the claimants that, since the property could not have been sold to the deceased without the mortgage being discharged, then all the deceased could ever hope to have had was an equitable interest in the property.

[90] The court notes that this argument may have had some merit if it had found that the deceased was in fact a purchaser in possession pursuant to an agreement for sale. However, given that such a finding of fact was not made, the court now only has to consider what is the position of the mortgagee with respect to the deceased as squatter or adverse possessor. In this case, the defendant is not seeking to claim title pursuant to an enforcement of his equitable interest under the agreement for sale, that is, by specific performance of the agreement, but by virtue of the LOAA, as an adverse possessor.

[91] The critical question for the court then, as was stated above, is whether there was an estate or interest of Bruce Silvera capable of being sold to the claimants at the time the power of sale was exercised by the mortgagee in 2016, or had it not by then been extinguished by adverse possession some approximately 11 years before the sale.

[92] The case law clearly indicates that a title is capable of being extinguished as against both the paper owner and the mortgagee alike. The defendant here, as stated above, relied on the authority of **Dagor Limited and MSB Limited and National Commercial Bank Limited** [2015] JMSC CIV 242, where Batts J stated at paragraph 12 of the judgment, which bears repeating, that:

“Actions to recover possession whether by the mortgagee or purchasers from the mortgagee may be met with any applicable

limitation defence. In this regard the mortgagee seeking possession is in law in no better position than for example one joint owner claiming possession against another. The limitation bar it has been held applies in such circumstances see **Wills v Wills** [2003] UKPC 84. A mortgagor in possession for the requisite 12-year period, in circumstances where the mortgagee's right to possession has accrued, is entitled to rely on sections 3 and 7 of the Limitation of Actions Act. **It therefore behoves purchasers of land to enquire as to the status of those in possession, and it matters not whether the land is purchased from a mortgagee. The possessory title can defeat the title of the registered owner and hence his ability to give a valid title ...**" (Emphasis supplied)

[93] From the evidence as presented by the defendant, the deceased had been in possession some 23 years prior to the power of sale being exercised; and although the initial mortgagees were likely to have been aware of the defendant's possession from as far back as 1999, when the letter was written by Garth Lyttle to the mortgagee bank on behalf of the deceased informing it of his and his family's possession of the property, there is no evidence that that mortgage company, or the one to whom the mortgage had been transferred, took any steps to protect their interest from being defeated. Even the claimants themselves were also seemingly aware of the possibility of persons being in possession prior to the sale, but took no steps prior to purchase to enquire further. As this court notes, that when the 2nd claimant was asked by counsel for the defendant under cross-examination, if he had asked the persons who had advertised the property whether there was anyone occupying the property, he stated that he was advised by the mortgage company that he would have to use his lawyer to get possession of the place. This answer, although not directly stating that he was told of persons being in physical possession, is indicative of some knowledge on his part, that he was not receiving the property with vacant possession, and therefore would have needed a lawyer to assist him in obtaining vacant possession. It therefore goes squarely back to the dictum of Batts J in **Dagor Limited**, where he stated that:

"It therefore behoves purchasers of land to enquire as to the status of those in possession, and it matters not whether the land is purchased from a mortgagee." (Emphasis supplied)

[94] This court is therefore of the view that there was a clear duty on the buyer to beware, and to ensure that the title that they received was free from any encumbrance, including a possible extinguishment of title by an occupant via adverse possession prior to sale. The cost of such a failure to make the necessary checks in this case has proven fatal to the claimants' claim, as it has resulted in the buyer obtaining via sale what could only be considered a mirage, that is, a title that seemed to be there on paper, but which had long been extinguished by the possessory title of the deceased.

[95] This court must also briefly address the issue raised by the claimants of the letter of Garth Lyttle to the mortgagee operating as a possible acknowledgement of title of the paper title holder, and therefore bringing into effect the operation of section 16 of the LOAA, which states that:

“When any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent, in writing signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of such rent by the person by whom such acknowledgment shall have been given shall be deemed to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same; and the right of such last-mentioned person, or any person claiming through him to make an entry, or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given.”

[96] The effect of this section, as was stated by Harris JA in **Milton Taylor v Winston Thompson** [2024] JMCA Civ 7, is that, once the possessor acknowledges the title holder's interest in writing, endorsed with his signature, then his prior possession is regarded as the possession of the title holder. However, I must agree with counsel for the defendant here that this section is not applicable to the instant case, as the letter in question did not fulfil two of the statutory requirements, that is: (a) it was not addressed to the title holder at the material time, that is, Bruce Silvera, but instead was addressed to the mortgagee; and (b) it was not signed by the possessor himself, Urban Newman, but rather by an attorney-at-law purportedly on his behalf.

[97] I am also in agreement with the further reasoning advanced by the defendant's counsel, that is, that even if the court were of the view that the letter amounted to an acknowledgement under section 16 of the ROTA, at most, it would have only resulted in a resetting of the limitation clock from 1999, the date of the letter, and therefore by 2011 the 12-year requirement would have still elapsed long before the sale and transfer to the claimants.

In summary the court finds: -

[98] That the defendant has provided sufficient evidence in support of the limitation defence of adverse possession, to establish, that Urban Newman (deceased) had been in open, undisturbed possession of the subject property for a period of more than 12 years and that, at the time of possession, he had the requisite intention to possess or the *animus possidendi*.

[99] Further, that based on that possession, the title of Bruce Silvera, the claimants' predecessor in title, had been extinguished many years prior to the sale of the subject property by JRFI to the claimants. Therefore, the claimants have failed to discharge their legal burden of proof and cannot successfully bring an action for recovery of possession against the defendant.

Disposition

[100] In the circumstances, the court orders as follows:

1. The claimants' claim for recovery of possession of property known as 2 Cassia Park Road, Kingston 10, in the parish of Saint Andrew, being all the land contained in the Certificate of Title registered at Volume 1095 Folio 631 of the Register Book of Titles, against the defendant, is dismissed;
2. Judgment is entered in favour of the defendant, as against the claimants;
3. Costs of the claim are awarded to the defendant, to be taxed if not sooner agreed; and

4. The claimants' attorneys-at-law are to file and serve the formal order.