



[2023] JMSC Civ 255

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. 2007 HCV 03610

BETWEEN GARNET NEWMAN CLAIMANT

(Administratrix of the Estate of CLARIS
CRAWFORD-THOMAS, Deceased, and
Administratrix of the Estate of CEDRIC
CRAWFORD, Deceased)

AND CONSIE CRAWFORD 1ST DEFENDANT
o/c CONSY CRAWFORD and
CONSEY CRAWFORD

AND ALFRED CRAWFORD 2ND DEFENDANT
(Deceased)

AND ALUMINA PARTNERS OF JAMAICA 3RD DEFENDANT
(ALPART)

IN OPEN COURT

**Mr Kevin Williams and Ms Regina Wong instructed by Messrs. Grant, Stewart,
Phillips & Company for the Claimant**

Ms Renae Barker-Richards instructed by ShieldsLaw for the 1st Defendant

Heard: September 28, 2022, April 14, 2023, and November 24, 2023

**Civil Procedure – Res judicata – The doctrine of res judicata – Issue estoppel –
The doctrine of issue estoppel – Whether the instant claim is a collateral attack
on a previous order of the court – Whether the instant claim offends the
doctrine of res judicata – Whether the claim offends the doctrine of issue
estoppel – Whether the formalities for the sale of land have been satisfied in
respect of the purported sale and purchase of the subject property –**

**Intestates' Estates and Property Charges Act, sections 2(1) and 4(1),
Interpretation Act, section 41**

A. NEMBHARD J

INTRODUCTION

- [1] This matter concerns the legal and equitable rights of the parties in the property, which is located at Salmon Town, in the parish of Manchester, being the land described and detailed in the Indenture of Conveyance, which is recorded at Liber New Series 1058 Folio 196, in the Island Record Office of Jamaica ("the subject property").
- [2] The Claimant, Garnett Newman, asserts that, in her capacity as Administratrix of the Estate of Claris Crawford-Thomas, she is legally entitled to the subject property. It is in this capacity that Ms Newman seeks to restrain the 1st and 2nd Defendants, Mr Consie Crawford, and Mr Alfred Crawford, respectively, from selling or otherwise transferring the subject property to the 3rd Defendant, Alumina Partners of Jamaica.
- [3] Additionally, Ms Newman seeks to restrain the 1st, 2nd, and 3rd Defendants from entering upon, being in possession of and constructing on the subject property. She also seeks Damages in Trespass.
- [4] By way of a Claim Form, which was filed on 11 September 2007, the Claimant, Garnet Newman, seeks the following Orders and relief: -
1. A Declaration that the Claimant, as the Administratrix of the Estate of CLARIS CRAWFORD-THOMAS, Deceased, and Administratrix of the Estate CEDRIC CRAWFORD, Deceased, is solely entitled to the land known as ALL THAT parcel of land situated at Salmon Town, in the parish of Manchester, being the land described and detailed in the Indenture of Conveyance, which is recorded at Liber New Series 1058 Folio 196, in the Island Record Office of Jamaica.

2. A Declaration that the 1st and 2nd Defendants, their agents and/or servants, are not the legal owners of the said land and thus are not competent to transfer any part of the said land to the 3rd Defendant or to any other person.
3. A Declaration that any agreement or contract of sale between the 1st and 2nd Defendants and the 3rd Defendant, with regard to the sale and transfer of the said land known as ALL THAT parcel of land situated at Salmon Town in the parish of Manchester, being the land described and detailed in the Indenture of Conveyance, which is recorded at Liber New Series 1058 Folio 196, in the Island Record Office of Jamaica, is null and void.
4. An Order restraining the 1st and 2nd Defendants from selling and the 3rd Defendant from purchasing any portion or part of the land known as ALL THAT parcel of land situated at Salmon Town in the parish of Manchester, being the land described and detailed in the Indenture of Conveyance, which is recorded at Liber New Series 1058 Folio 196, in the Island Record Office of Jamaica.
5. An Order restraining the 1st, 2nd, and 3rd Defendants from entering on, being in possession of or constructing any building on any portion of the land known as ALL THAT parcel of land situated at Salmon Town in the parish of Manchester, being the land described and detailed in the Indenture of Conveyance, which is recorded at Liber New Series 1058 Folio 196, in the Island Record Office of Jamaica.
6. Damages for trespass.
7. Interest thereon at such rate and for such period as this Court shall think fit.
8. Costs.

9. Such further and other relief and Orders as this Court shall think fit in the circumstances of this case.

BACKGROUND

The factual substratum

- [5] On 19 January 1961, Mr Cedric Crawford purchased the subject property, by way of an Indenture of Conveyance, from Ms Rebecca Jestina Broomfield. This Indenture of Conveyance was registered with the Island Records Office on 30 November 1961, at Liber New Series 1058 Folio 196.¹ The subject property is estimated to be approximately nine (9) acres.²
- [6] Mr Cedric Crawford migrated to the United Kingdom and allowed his father, Mr Lancelot Crawford, to occupy the subject property together with Ms Marjorie Answer.
- [7] Mr Lancelot Crawford died in or around 1982, leaving Ms Answer in occupation of the subject property.
- [8] On 6 April 1987, Mr Cedric Crawford died in London, England, intestate. He was survived by his mother, Ms Claris Crawford-Thomas, and his siblings, Ms Garnet Newman, Mr Consy Crawford, Mr Alfred Crawford, and Ms Pearline Crawford. Mr Cedric Crawford's estate passed to Ms Claris Crawford-Thomas.
- [9] On 24 January 1994, Ms Claris Crawford-Thomas also died.
- [10] On 2 October 1996, Ms Newman obtained Letters of Administration in the estates of Cedric Crawford and Claris Crawford-Thomas. After this, Ms Pearline Crawford gave verbal notice to Ms Answer to vacate the subject

¹ See – Paragraphs 3 and 4 of the Witness Statement of Garnett [sic] Newman, which was filed on 19 May 2022.

² See – Paragraph 3 of the Witness Statement of Garnett [sic] Newman, which was filed on 19 May 2022. MS Newman describes the land as “*butting and bounding Northerly on land of David Morgan, Rose Biggs and Margaret McCatty respectively, Easterly on the Parochial Road leading from Stones Hope to Cross Keys Southerly on lands of Johnnie McCatty and Delhi's Gaynor respectively and Westerly on a street or how so ever otherwise the same may be butted, bounded, known, distinguished and described.*”

property. By way of response, Ms Answer commenced proceedings in the then Resident Magistrate's Court for the parish of Manchester, holden at Mandeville, in Plaintiff No. 623/96. By those proceedings, Ms Answer sought damages for trespass and an injunction to restrain Ms Newman from entering the subject property. These proceedings were subsequently discontinued.

[11] On 9 August 2000, Ms Newman, in her capacity as Administratrix, initiated Suit No. 2000/193 against Ms Answer, for declaratory orders in relation to the subject property, including recovery of possession of the subject property and mesne profits.

[12] On 20 September 2001, The Honourable Mr Justice Reckord made the following Orders in Claim No. C.L. 2000/N. 193: -

- "1. That the Plaintiff, as the Administrator of the Estate of Claris Crawford-Thomas, deceased, is entitled to the land known as all that parcel of land situated at Salmon Town in the parish of Manchester upon which the Defendant resides.*
- 2. That the Plaintiff is entitled to recover possession of the said land from the Defendant and that the Defendant do quit and deliver up possession forthwith.*
- 3. That the costs of this Application and all other costs incurred herein be that of the Plaintiff."*

[13] Ms Newman contends that, in or around 2007, she discovered that Mr Consy Crawford and Mr Alfred Crawford had entered negotiations for the sale of the subject property to the 3rd Defendant, Alumina Partners of Jamaica, ("ALPART").³ Ms Newman further contends that her brothers received some of the proceeds of this sale, along with a home, which is located in Mandeville, in the parish of Manchester, for each brother. Ms Newman alleges that the bodies of David Crawford, Marie Newman, and Lancelot Crawford, which were buried on the subject property, were exhumed.

³ See – Paragraph 13 of the Witness Statement of Garnett [sic] Newman, which was filed on 19 May 2022. It is alleged that the purported sale of the subject property was to enable Alumina Partners to conduct excavation works.

- [14] Ms Newman maintains that Messrs. Consy Crawford and Alfred Crawford had no authority to agree to or to execute any such transaction, in relation to the subject property.
- [15] On the other hand, the 1st Defendant, Mr Consy Crawford, asserts that he became the legal owner of the subject property, having purchased it from Mr Cedric Crawford, on 23 November 1986. This, Mr Consy Crawford maintains, he did for the purchase price of Nine Hundred and Eighty Thousand Jamaican Dollars (JMD\$980,000.00).
- [16] Mr Consy Crawford further asserts that his legal interest in the subject property supersedes any declaration which has been made by the court. Mr Consy Crawford relies on a receipt, which he avers is evidence of his payment of the purchase price in respect of his purchase of the subject property and indicates that the said receipt is unstamped. Nor did he transfer the subject property into his name because he had no plans to sell the subject property, until he was approached by ALPART, sometime in August 2006.⁴
- [17] Mr Consy Crawford accepts that he consented to Ms Newman's obtaining a Grant of Letters of Administration in the Estates of their brother and mother, respectively but indicates that, at no time, did he grant her [Ms Newman] rights of possession, in respect of the subject property. Mr Consy Crawford asserts that he has resided at the subject property since December 2002, while Mr Alfred Crawford resided there since June 2007. Mr Consy Crawford maintains that he and Alfred Crawford have made substantial improvements to the existing structure on the subject property.⁵
- [18] Additionally, Mr Consy Crawford maintains that, in or around August 2006, he was approached by representatives of ALPART, who expressed an interest in purchasing the subject property. In or around September 2006, Mr Consy Crawford entered into an option agreement with ALPART. In or around

⁴ See – Paragraph 7 of the Witness Statement of Consy Crawford, which was filed on 11 March 2022.

⁵ See – Paragraph 8 of the Witness Statement of Consy Crawford, which was filed on 11 March 2022.

October 2006, ALPART exercised its option to purchase the subject property.⁶

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- [19] As part of the consideration and compensation for the sale and purchase of the subject property, Messrs. Consy Crawford and Alfred Crawford received from ALPART two (2) homes which were constructed by it.⁹
- [20] On 5 March 2012, The Honourable Mr Justice Raymund King ordered that the action against ALPART be stayed pending the conclusion of the matters in issue between Ms Newman and Messrs. Consy Crawford and Alfred Crawford.¹⁰

THE ISSUE

- [21] The following issue is determinative of the Claim: -

⁶ See – Paragraph 6 of the Affidavit of Michalene Lattore, which was filed on 25 February 2010. The parties, Mr Consy Crawford and ALPART agreed the following terms: “a) that the vendor was to be resettled on lands; b) that the purchaser was to pay the cost of \$667,000.00 per acre in respect of seven (7) acres of land \$4,669,000.00) in addition to providing three acres of resettlement land in lieu of cash; c) that the vendor was to be compensated for economic trees in the sum of \$899,520.00 and d) that the vendor was to be compensated for buildings and appurtenances in the sum of \$1,600,000.00.”

⁷ See also – Paragraph 10 of the Defence of the Third Defendant, which was filed on 21 December 2007.

⁸ See – Paragraphs 7 to 11 inclusive of the Affidavit of Michalene Lattore, which was filed on 25 February 2010. She asserts that the Mr Consy Crawford established a good root of title and the parties proceeded to execute a Deed of Indenture on 25 April 2007. She maintains that ALPART had no knowledge of Ms Newman’s or any other interest in the subject lands. Further, Ms Lattore states that ALPART made the reasonable searches and relied on Mr Crawford’s warranty as to the ownership, paid over the contracted sums to Mr Consy Crawford. Ms Lattore argues that ALPART has a beneficial interest in the subject property. She also states that this was a bona fide sale for value without notice of any other interest in the said land and ALPART was unaware of and had no means of becoming aware of any alleged competing interests. See also Paragraphs 11 to 14 of the Defence of the Third Defendant, which was filed on 21 December 2007.

⁹ See – Paragraphs 11, 12, 13, and 14 of the Witness Statement of Consy Crawford, which was filed on 11 March 2022.

¹⁰ See – Formal Order, which was filed on 7 March 2012. It was also ordered that “upon a final determination of the matters in issue between Ms Newman and Mr Consy Crawford and Mr Alfred Crawford, ALPART is to pay over the balance purchase price with such interest accrued thereon, less such costs are payable by the Vendor and shall issue titles in respect of the aforesaid resettlement lands with dwellings thereon, to such party as is found by the Court to be entitled to the said payment and titles.” ALPART, in conjunction to Lyn’s Funeral Home Limited, was also ordered to identify to Ms Newman the final resting place of the bodies of Marie Elizabeth Newman, Lancelot Crawford and David Crawford, the daughter, father and brother of Ms Newman respectively.

- i. Whether the 1st Defendant is precluded from asserting legal ownership of the subject property, having regard to the doctrines of res judicata and issue estoppel.

THE LAW

The doctrines of res judicata and issue estoppel

- [22] The doctrine of res judicata¹¹ stipulates that a decision or ruling made by a court of competent jurisdiction cannot be re-litigated by the parties who are bound by the said decision or ruling, except on appeal.¹² The purpose of the doctrine is to protect courts from having to adjudicate more than once on issues arising from the same cause of action and to protect the public interest that there should be finality in litigation and that justice be done between the parties.^{13 14}
- [23] Issue estoppel may arise where a plea of res judicata cannot be established because the causes of action are different. It has been established by some authorities that this form of estoppel arises where a particular issue, forming a necessary ingredient in a cause of action, has been litigated and decided and one of the parties seeks to reopen it in subsequent proceedings between the

¹¹ Res judicata is derived from the Latin term, *res judicata pro veritate accipitur*, which means 'a thing adjudicated is received as the truth.'

¹² Where res judicata is pleaded by way of estoppel to an entire cause of action, rather than to a single matter in issue, it amounts to an allegation that the whole legal rights and obligations of the parties are concluded by the earlier judgment, which may have involved the determination of questions of law as well as findings of fact.

¹³ See – **Gordon Stewart and Independent Radio Company Limited v Wilmot Perkins** [2012] JMCA Civ 2

¹⁴ See – **Henderson v Henderson** [1843]-60] All ER Rep. 378, where Wigram VC made the frequently cited statement concerning *res judicata* at pages 381-382: " – where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not [except in special circumstances] permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence or even accident, omitted part of their case. The plea of res judicator applies, except in special cases, not only to points on which the court was required by the parties to form, an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties exercising reasonable diligence, might have brought forward at the time." (emphasis supplied)

same parties, involving a different cause of action to which the same issue is relevant.¹⁵

[24] The authorities make it clear that for such a plea to succeed there must be in existence a final judgment by a court of competent jurisdiction, where there is co-existing the same parties or their privies, the same damages and the same question of law or fact.

[25] The Halsbury's Laws of England states that:

“Cause of action estoppel is absolute only in relation to points actually decided on the earlier occasion and there is no justification for the principle applying in circumstances where there has been no actual adjudication of any issue and no action by a party which would justify treating them as having consented, either expressly or by implication, to having conceded the issue by choosing not to have the matter formally determined. Equally, an exception to issue estoppel arises in the special circumstance where there has become available to a party further material relevant to the correct determination of a point involved in the earlier proceedings, whether or not that point was specifically raised and decided, being material, which could not by reasonable diligence have been adduced in those proceedings.”

[26] A party is therefore precluded from contending the contrary of any precise point which, having once been distinctly put in issue, has solemnly and with certainty been determined against him. Even if the objects of the first and second actions are different, the findings on a matter which came directly (not collaterally or incidentally) in issue in the first action and which is embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies. The principle applies whether the point involved in the earlier decision is one of fact or law or a mixed question of fact and law.

[27] What can be gleaned from the authorities is that the principle is explained as requiring, among other things, that the issue in question must have been decided between the same parties or their privies before the estoppel can

¹⁵ See - **Fletcher & Company Limited v Billy Craig Investments Limited [2012] JMSC Civ 128**, per McDonald-Bishop J (as she then was), at paragraph [43]

arise. The authorities on this subject have revealed two schools of thought as to the extent of the application of this form of estoppel. One school of thought is that the true test of an issue is whether for all practical purposes the party seeking to put forward the issue has already had that issue determined against him by a court of competent jurisdiction, even if the parties are different.

[28] The conflicting approach is to confine the issue estoppel to those species of estoppel per rem judicatum that may arise in civil actions between the same parties or their privies. It follows then that issue estoppel may or may not operate in cases involving a new party to the proceedings depending on the approach that is adopted.

[29] In **Fletcher & Company Limited v Billy Craig Investments Limited**¹⁶ McDonald Bishop J (as she then was) accepted as the better view the broader approach that issue estoppel should apply in circumstances where the parties are different, provided that the person against whom the estoppel is being sought to be invoked in the subsequent proceedings, was a party to the earlier proceedings in which the point in issue was determined against him.

Abuse of Process

[30] An abuse of process will arise in circumstances where to challenge the findings in an earlier claim would amount to be manifestly unfair to a party in the later claim for the issues to be relitigated, or if relitigating will bring the administration of justice into disrepute.^{17 18}

¹⁶ [2012] JMSC Civ 128, at paragraph [50]

¹⁷ See – **Hon. Gordon Stewart et al v. Independent Radio Company Limited and Wilmot Perkins** SCCA No. 9/2011

¹⁸ See – **The Minister of Housing v New Falmouth Resorts Ltd.** [2016] JMCA Civ 20, per F Williams JA (Ag.) (as he then was). F Williams in paragraph 96 noted that even where the circumstances did not strictly fall within the spirit of the rules as to res judicata and issue estoppel, a matter could be still found to be in essence an abuse of the process of the court.

The effect of the Intestates' Estates and Property Charges Act

- [31] The terms “residuary estate” and “intestate” are defined by The Intestates' Estates and Property Charges Act of Jamaica. They are defined as follows: -

2. – (1) In this Act –

(a) “residuary estate” means every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate, after payment of all such funeral and administration expenses, debts and other liabilities as are properly payable thereout, which (otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will;

(b) “intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;”

- [32] Section 4(1) of the Intestates' Estates and Property Charges Act mandates that the residuary estate of an intestate shall be distributed in the manner or held on the trusts specified in the Table of Distribution as prescribed by the Act.

THE SUBMISSIONS

Submissions advanced on behalf of the Claimant

- [33] Learned Counsel Ms Regina Wong submitted that the primary issue for the Court is the applicability of and effect that the Order of September 2001 has on the subject property. It was submitted that this issue goes to a basic and fundamental principle of law which is the finality of judgment and abuse of process.
- [34] It was also submitted that this Claim could be said to amount to an enforcement of a previous unchallenged Order of the court and that the finality of that Order should be upheld. Ms Wong maintained that the judgment of 20 September 2001 is an Order which was made by a court of competent jurisdiction regarding property within the jurisdiction and therefore must be considered a judgment in rem. This, Ms Wong further maintained, is because

it determines the status and interest of land and therefore must be binding and conclusive against all persons, including the Defendants.

- [35] It was further submitted that the only proper forum by which the Defendants can seek to challenge the Order of the court is on appeal, which they have not sought to do.
- [36] Ms Wong asserted that it is the 1st Defendant's pleaded case and evidence under cross-examination, that they consented to the action instituted by the Claimant to remove Ms Marjorie Answer from the property in Salmon Town. It is that action which gave rise to the Order of 20 September 2001. That consent is in direct contravention of the position now being held in the instant Claim because there could have been no need to consent to such an action being instituted by the Claimant, if the subject property were owned by the 1st Defendant as is now being alleged.
- [37] Ms Wong also asserted that, although the 1st and 2nd Defendants were not direct parties to the previous proceedings, they ought to be considered privy to same, as the Claimant acted in her capacity as Administratrix of an Estate to which the 1st and 2nd Defendants are beneficiaries and, as such, she acted for and on their behalf. To buttress this submission Ms Wong referred to the authority of **Rasheed Wilks v Donovan Williams**.¹⁹
- [38] Ms Wong further asserted that although the doctrine is not pleaded as a defence in the instant case, the assertions of the 1st and 2nd Defendants raise issues upon which there has already been judicial determination and as such, the doctrine must apply.
- [39] Consideration must be had to the principle of Estoppel by Record. The doctrine can only be defeated in special circumstances in which fresh evidence now appears which did not previously exist at the time the determination was made. It was asserted that the 1st and 2nd Defendants are unable to rely on their receipt allegedly for the purchase of the subject property to assert such special circumstances exist. He maintains that the receipt being relied upon by the 1st Defendant as proof of the alleged sale of

¹⁹ [2020] JMSC Civ 234.

the property is negated by the consent given by the said 1st Defendant to the action previously brought by the Claimant and cannot now be relied on by him to defeat the doctrine of res judicata. Further, Ms Wong argues that the judgment is a conclusive judgment in rem.

[40] Ms Wong submitted that, even if the consent of the 1st Defendant to the previous proceedings does not negate the Defence which is currently being advanced, the 1st Defendant's receipt, taken at its highest, would have existed at the time of the previous proceedings and cannot be considered as fresh evidence.

[41] Finally, Ms Wong further submitted that the Order dated 20 September 2001 must stand, and that the subject property rightfully forms part of the Estate of Claris Crawford-Thomas.

Submissions advanced on behalf of the 1st Defendant

[42] For her part, Learned Counsel Mrs Renae Barker-Richards submitted that because Mr Consy Crawford purchased the subject property from Mr Cedric Crawford in November 1986, it would not form part of Mr Cedric Crawford's residuary estate. Mrs Barker-Richards referred to section 2(a) of the Intestates' Estates and Property Charges Act, which defines the term "residuary estate". On this basis, Ms Barker-Richards submitted, Mr Cedric Crawford would be incapable of devising it through any Last Will and Testament, as, at the time of his death, he was not possessed of any beneficial interest in the subject property.

[43] Mrs Barker-Richards maintained that the receipt dated 23 November 1986 is evidence of Mr Consy Crawford's purchase of the subject property. It was submitted that Ms Newman has not pleaded any allegations of fraud against Mr Consy Crawford in relation to that receipt. Mrs Barker-Richards maintained that no evidence was produced at the trial of the instant Claim to challenge the authenticity of Mr Consy Crawford's proof of his purchase of the subject property. On this basis, Mrs Barker-Richards submitted, the receipt is

sufficient evidence for the Court to find that the subject property did not form part of Mr Cedric Crawford's Estate at the time of his death.

[44] In relation to the Order of the Supreme Court, which was made on 20 September 2001, by the Honourable Mr Justice Reckord, Mrs Barker-Richards submitted that that Order was not dispositive of the issues raised in the instant Claim. Mrs Barker-Richards submitted further that the pleadings therein do not make mention of the sale of the subject property to Mr Consy Crawford or to the receipt dated 23 November 1986. Nor was Mr Consy Crawford's interest in the subject property disclosed to the court in those proceedings. Additionally, Mrs Barker-Richards submitted that the parties involved in the instant Claim are not the same as the parties who were before the court in Suit No. C.L. 2000/N-193. On this basis, any Orders made in those proceedings bear no weight in the instant Claim. To buttress this submission, Mrs Barker-Richards relied on the authority of **Fletcher & Company Limited v Billy Craig Investments Limited & Scotia Investments Limited**.²⁰

[45] It was submitted that a case in trespass has not been made out on the pleadings or on the totality of the evidence on Ms Newman's case. It was submitted that Ms Newman does not allege any loss.

[46] On these bases, Mrs Barker-Richards submitted that the Court ought to refuse the relief sought in the Claim Form, which was filed on 11 September 2007.

ANALYSIS AND FINDINGS

[47] Ms Newman seeks declaratory relief in respect of the subject property. She claims specifically that, in her representative capacity as administratrix she is solely entitled to the subject property; that the 1st and 2nd Defendants are not the legal owners of the subject property and that any Agreement for Sale made among the 1st and 2nd Defendants and the 3rd Defendant, is null and void.

²⁰ [2012] JMSC Civil 128 at paragraph 50.

- [48] Ms Newman also seeks Damages in Trespass and Orders restraining the 1st and 2nd Defendants from selling the subject property to the 3rd Defendant.
- [49] Ms Newman contends that at the time of the death of Cedric Crawford, he was the legal owner of the subject property, and, on his death, the subject property formed part of his estate, for which she is the Administratrix.
- [50] Conversely, the 1st and 2nd Defendants contend that the 1st Defendant purchased the subject property from Cedric Crawford, prior to his death; and that at the time of the death of Cedric Crawford, he was not the legal owner of the subject property, nor did it form part of his estate.
- [51] The Court finds that, although the doctrine of res judicata or that of issue estoppel have not been pleaded in the present instance, the assertions of the 1st and 2nd Defendants raise issues upon which there has already been judicial determination.
- [52] Even if the Court is incorrect in its finding in this regard, the issue of whether Mr Consy Crawford has proven, on a preponderance of the evidence, that he acquired the subject property by purchasing same, is a live one.
- [53] The authorities are clear that where the title to land is unregistered, the purchaser takes subject to all legal rights. There are certain exceptions to this general rule. The purchaser takes free from the few legal rights which are void against him for want of registration; and the few legal rights which are overreached. With respect to equitable rights, the purchaser takes subject to all equitable rights. The exceptions include equitable rights which are void against him for want of registration; the many equitable rights which are overreached, for example, under a settlement or trust of land; and unregistrable and non-over reachable equitable rights in respect of which he can show either that he is a bona fide purchaser of a legal estate for value without notice, or that he claims through such a person.
- [54] The authorities are equally clear that the transfer of land by sale is essentially a two-stage process involving a binding contract of sale drawn up and signed by both vendor and purchaser. 'Completion' takes place by means of a conveyance of the legal title by the vendor to the purchaser, in the case of

unregistered land. In unregistered land, the conveyance of the legal estate has the effect of immediately vesting the legal title in the purchaser.

- [55] By virtue of section 41 of the Interpretation Act of Jamaica, the English Statute of Frauds, 1677 applies to this jurisdiction.²¹ Section 41 of The Interpretation Act of Jamaica provides as follows: -

“41. All such laws and Statutes of England as were, prior to the commencement of 1 George II Cap. 1, esteemed, introduced, used, accepted, or received, as laws in the Island shall continue to be laws in the Island save in so far as any such laws or statutes have been, or may be, repealed or amended by any Act of the Island.”

The effect of this provision is that legislation such as the English Statute of Frauds, 1677²² still forms part of the legislative bedrock of Jamaica.

- [56] In the authority of **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley and Ors**,²³ Harris JA examined the English Statute of Frauds and its effect. At paragraphs [18], [19], [20] and [21], Harris JA made the following observations: -

“[18] In his findings, it can be readily observed that the learned trial judge placed enormous reliance on the Statute of Frauds. He correctly found that, for the purpose of the statute, any document upon which reliance is placed as a sufficient memorandum in writing must contain essential terms of a contract. However, in finding that there was no enforceable contract between the bank and Harley Corporation, he failed to invoke a cardinal rule of pleadings in that, in order to be relied upon, the Statute of Fraud must be pleaded. Nowhere in the pleadings is it disclosed that the statute had been pleaded. Therefore, the learned trial judge could not have properly acted upon it. In light of his findings, we think it appropriate to deal with the statute and its effect.

[19] The statute does not render invalid a contract which does not conform with its provisions. This has been definitively pronounced by Lord Blackburn in Maddison v Alderson (1883) 8 App. Cas. 467, when he said, at page 488:

²¹ See – per Smith JA in **Brady v Chen Ltd v Devon House Development Ltd** (2010) Court of Appeal Jamaica Civ App No 62 of 2009 (unreported) Carilaw TT 2010 CA 106.

²² Repealed by the Law of Property Act 1925 (c. 20), Sch. 7 and Law Reform (Enforcement of Contracts) Act 1954 (c.34), s. 1.

²³ [2010] JMCA Civ 46

“I think that it is now finally settled that the Statute of Frauds both the 4th and 17th sections is not to render the contracts within them void still less illegal but is to render the kind of evidence required indispensable when it is sought to enforce the contract.”

[20] As regards compliance with the statute, the foregoing illustrates that there is a distinction between the validity and the enforceability of a contract. As shown in Maddison v Alderson, a contract may still be valid notwithstanding its noncompliance with the statute. However, as correctly submitted by Dr Barnett, the question of its enforceability cannot be successfully raised in an action. No issue has been raised on the pleadings as to the enforceability of the contract between Harley Corporation and the bank.

[21] A further error on the part of the learned trial judge is that in misconstruing the statute, he misdirected himself on the evidence. His finding that the requirements of the statute were not satisfied was primarily based on a receipt of 5 January 1995, issued by the bank, through its attorneys-at-law, to Harley Corporation, with respect to the deposit paid...He failed to recognize that the payment of a deposit subsequent to an oral agreement for the purchase of land is sufficient evidence in support of a claim for specific performance...”.

[57] Section 4 of the Statute of Frauds reads as follows: -

“No action may be brought upon any contract for the sale or other disposition of land or any interest in land unless the agreement upon which such action is brought... or some memorandum or note thereof is in writing...signed by the party to be charged or by some other person by him lawfully authorized...”.

[58] It is expected that this written memorandum must contain the following: ⁻²⁴

- i. A description of the parties (the names of the vendor and the purchaser, or at least describe them sufficiently to allow them to be identified).
- ii. A description of the property.^{25 26}

²⁴ See – Pages 238 and 239 of Gilbert Kodilinye’s **Commonwealth Caribbean Property Law**, 4th edn.

- iii. The agreed price.
- iv. Other relevant terms.
- v. The signature by the party to be charged (that is, the party against whom the agreement is being enforced, or by his agent).

[59] The pronouncements of Sir George Jessel MR in the authority of **Lysaght v Edwards**,²⁷ are instructive in relation to the effect of a valid contract for the sale of land: -

“...the moment you have a valid contract of sale, the vendor becomes in equity a trustee for the purchaser of the estate sold and the beneficial ownership passes to the purchaser, the vendor having a right to the purchase money a charge or lien on the estate for the security of that purchase money and a right to retain possession of the estate until the purchase money is paid in the absence of expressed contract as to the time of delivery.”

[60] In circumstances where there is an absence of statutory requirements or formalities, the contract for sale of land is deemed unenforceable, unless the party seeking to enforce the contract can demonstrate sufficient acts of part performance, to bring an action for specific performance.²⁸

[61] In the present instance, the Court observes that Mr Consy Crawford has failed to produce in evidence the receipt on which he relies in proof of his alleged acquisition of the subject property by purchasing same. Nor has Mr Consy Crawford produced any independent evidence which can prove his assertion

²⁵ In relation to the property, two matters must be certain, namely the identity of the land which is to be sold and the estate which is to be granted. See – paragraph 15-030 on page 639 of **Megarry and Wade's The Law of Real Property** 8th edn.

²⁶ Notably, a contract will not be invalidated merely because it does not state the interest which the vendor intends to pass or that it is subject to incumbrances of which the purchaser knows, or which are patent. Where the contract is silent, it is presumed that the vendor is selling a fee simple subject to such incumbrances.

²⁷ (1876) 2 Ch. 499

²⁸ **Maddison v Alderson** (1883) 8 AC 467. It should be noted that the legal doctrine of part performance is based on equitable principles, which means that equity looks at the intention rather than form. The doctrine of part performance provides that a contract required to be evidenced in writing will still be enforceable even if it is not so evidenced provided that one of the parties does certain acts by which the contract is partly performed. The acts of part performance must be performed by the person alleging the contract to exist and must relate unequivocally to the contract.

that he is the owner of the subject property, having acquired it by purchasing same.

[62] On a preponderance of the evidence, the Court makes the following findings of fact: -

- i. at the time of the death of Mr Cedric Crawford, he was the legal owner of the subject property.
- ii. on the death of Mr Cedric Crawford, the subject property formed part of his estate.
- iii. in her representative capacity as Administratrix of the Estate of Mr Cedric Crawford, Ms Newman is solely entitled to the subject property.
- iv. that Mr Consy Crawford seeks to raise issues which have been adjudicated and finally determined by the Honourable Mr Justice Record.
- v. that, if the Court is incorrect in its finding which is indicated at sub-paragraph iv. above, Mr Consy Crawford has failed to produce in evidence the receipt dated 23 November 1986.
- vi. that, in any event, Mr Consy Crawford has failed to prove, on a balance of probabilities, that he is the legal owner of the subject property, having acquired it by purchasing same.
- vii. that any Agreement for Sale made among the 1st and 2nd Defendants and the 3rd Defendant, is null and void.
- viii. That the 1st Defendant is liable for Damages in Trespass.

DISPOSITION

[63] It is hereby declared and ordered as follows: -

1. That the Claimant, as the Administratrix of the Estate of CLARIS CRAWFORD-THOMAS, Deceased, and the Administratrix of the Estate CEDRIC CRAWFORD, Deceased, is solely entitled to the land known as ALL THAT parcel of land situated at Salmon Town, in the parish of Manchester, being the land described and detailed in the Indenture of Conveyance, which is recorded at Liber New Series 1058 Folio 196, in the Island Record Office of Jamaica.
2. That the 1st and 2nd Defendants, their agents and/or servants, are not the legal owners of the said land and thus are not competent to transfer any part of the said land to the 3rd Defendant or to any other person.
3. That any agreement or contract of sale between the 1st and 2nd Defendants and the 3rd Defendant, with regard to the sale and transfer of the said land known as ALL THAT parcel of land situated at Salmon Town in the parish of Manchester, being the land described and detailed in the Indenture of Conveyance, which is recorded at Liber New Series 1058 Folio 196, in the Island Record Office of Jamaica, is null and void.
4. That the Claimant is entitled to Damages in Trespass against the 1st Defendant.
5. The Hearing of the Assessment of Damages is fixed for Case Management Conference on 23 April 2024 at 2:00 p.m., for a duration of a half an hour.
6. Costs are awarded to the Claimant against the 1st Defendant and are to be taxed if not sooner agreed.
7. The Claimant's Attorneys-at-Law are to prepare, file and serve these Orders.