



[2025] JMSC Civ 24

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN CIVIL DIVISION

CLAIM NO. SU 2020 CV 03771

BETWEEN SANDRA FAYE ZELAYA-MILLER CLAIMANT

(Also known as Sandra Faye Miller
Formerly known as Sandra Simmonds Cameron
and Sandra Faye Cameron
Administratrix of the Estate
of Louise Winter, deceased and in her own right)

AND FESTUS GETFIELD DEFENDANT

CONSOLIDATED WITH

CLAIM NO. SU 2021 CV 03074

BETWEEN SANDRA FAYE ZELAYA-MILLER CLAIMANT

(Also known as Sandra Faye Miller
Formerly known as Sandra Simmonds Cameron
and Sandra Faye Cameron)

AND FESTUS GETFIELD DEFENDANT

IN OPEN COURT

**Mesdames Marva Hanson-Burnett and Ms Brithany Brooks instructed by Hanson
Burnett Law for the Claimant**

Ms Michala Gayle instructed by Smith Law for the Defendant

Heard: 18 April 2024, 26 June 2024, 11 October 2024, 28 February 2025 and 2 May 2025

Land – Registered land – Application to bring land under the Registration of Titles Act – Allegation of fraud – Meaning of fraud under the Registration of Titles Act – Whether title obtained by fraud – Whether the claim for fraud is statute barred

Limitation of Act sections 3, 4, 8, 27 and 30

A. NEMBHARD J

INTRODUCTION

- [1] At the heart of this consolidated Claim is ALL THAT PARCEL of land consisting of 1496.92 square meters and situated at Good Intent District, Harry Watch P.A. in the parish of Manchester, being the land comprised in Certificate of Title registered at Volume 1442 and Folio 599 of the Register Book of Titles (“the subject property”). In or around 1980, a house was built on the subject property.
- [2] The Claimant, Mrs Sandra Zelaya-Miller, asserts that the subject property belonged to her grandmother, the late Louise Wynter and that she is the administratrix of her late grandmother’s estate.¹ Mrs Miller further asserts that the Defendant, Festus Getfield, fraudulently acquired a registered title to the subject property. By virtue of the consolidated Claim, Mrs Miller also seeks to recover possession of the subject property from Mr Festus Getfield.
- [3] Conversely, Mr Festus Getfield maintains that he acquired the title to the subject property when his grandfather, the late Gerald Getfield, conveyed his interest in the subject property to him [Mr Festus Getfield] by way of a Deed of Gift. Mr

¹ See – Letters of Administration with Will Annexed in the Estate of Louise Veronica Wynter, dated 21 September 2014. See a copy of this document contained in Exhibit 16 of the Bundle of Agreed Documents, which was filed on 27 March 2024. See also, paragraph 23 of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023.

Festus Getfield further maintains that he has been in open and exclusive possession of the subject property for more than twelve (12) years. As proof of his ownership of the subject property, Mr Festus Getfield asserts that a registered title² was issued to him by the Registrar of Titles on 29 July 2010. Mr Festus Getfield vehemently denies the allegations of fraud levied against him and maintains that Mrs Miller has no legal right or basis to demand recovery of possession of the subject property from him.

The consolidated claim

Claim No. SU 2020 CV 03771

[4] By way of an Amended Claim Form, which was filed on 26 January 2021, Mrs Miller claims in her personal and representative capacity and seeks the following Orders of the Court: -

- i. A Declaration that the Certificate of Title registered at Volume 1442 Folio 599 of the Register Book of Titles was obtained by the Defendant by fraud.
- ii. An Order directing the Registrar of Titles to cancel the said Certificate of Title and to issue one in the name of the Claimant.
- iii. Costs.

[5] In his Defence and Counterclaim, which was filed on 11 March 2021, Mr Festus Getfield seeks a Declaration that he has been in exclusive, open and undisturbed possession of the subject property for more than twelve (12) years, to the exclusion of Mrs Miller, her alleged predecessor in title and all others. Mr Festus Getfield also seeks an Order of the Court restraining Mrs Miller from entering

² See – Exhibit 21 of the Bundle of Agreed Documents, which was filed on 27 March 2024. This Exhibit contains a copy of this Duplicate Certificate of Title.

upon the subject property or in any way disturbing his exclusive, open and undisturbed possession of same.

Claim No. SU 2020 CV 03074

- [6]** On 25 July 2014, by way of Plaintiff Note No. 929 of 2014,³ Mrs Miller commenced the claim for recovery of possession in the Resident Magistrate's Court for the parish of Manchester (now the Manchester Parish Court). Mrs Miller obtained a default judgment against Mr Festus Getfield, which was subsequently set aside by a Judge of the Parish Court.
- [7]** The matter was subsequently transferred to the Supreme Court to be joined with Claim No. SU 2020 CV 03771.⁴ On 12 July 2021, Master Miss S. Orr (Ag) (as she then was), ordered that a Claim Form be filed, which became Claim No. SU 2020 CV 03074.⁵
- [8]** By way of that Claim Form, which was filed on 17 September 2021, Mrs Miller seeks to recover possession of the subject property. In his Defence to the Claim, which was filed on 28 September 2021, Mr Festus Getfield maintains his assertion that Mrs Miller has no right to demand recovery of possession of the subject property from him.
- [9]** By virtue of a subsequent Order of the Supreme Court, both Claims were consolidated.

³ See – Exhibits 18 and 19, which contain a copy of this Plaintiff Note and the Particulars of Claim for Plaintiff Note 929/14, in the Bundle of Agreed Documents, which was filed on 27 March 2024.

⁴ See – Letter of Transfer re Plaintiff No. 929/24 [sic] Sandra Miller v Festus Getfield, dated 24 June 2021 and bearing the signature of Assistant Clerk of Court of the Civil Division for the parish of Manchester, Ms Keisha Roberts.

⁵ See – Formal Order, which was filed on 20 August 2021.

BACKGROUND

The factual matrix

- [10] In the early 1970s, the subject property was owned by the late Claudius Getfield.⁶ Mr Gerald Getfield and Ms Louise Wynter were involved in a common-law relationship with each other and resided in Good Intent District, in the parish of Manchester up to the time of their death. Mr Gerald Getfield had several adult children, including Bernice Getfield and Rupert Getfield, the father of Mr Festus Getfield.⁷ The union between Mr Gerald Getfield and Ms Louise Wynter did not produce any children.
- [11] Both Mrs Miller and Mr Festus Getfield have significantly different accounts in respect of the acquisition of the subject property and the construction of the building on same.

The claimant's case

- [12] Mrs Miller is the granddaughter of the late Louise Wynter. Mrs Miller avers that in the 1970s, her grandmother lived with Mr Gerald Getfield in his house in Good Intent District, in the parish of Manchester. Mrs Miller desired stability in her grandmother's living arrangement and as a result, in 1979, she [Mrs Miller] sent money to her grandmother to purchase land.⁸ Mrs Miller asserts that her grandmother bought one (1) acre of land from Mr and Mrs Claudius Getfield for the sum of One Thousand Dollars (\$1,000.00). To buttress this assertion, Mrs Miller relies on three (3) receipts in proof of payment for the subject property.^{9 10}

⁶ Mr Claudius Getfield is the great grand uncle of Mr F Getfield, the Defendant in the claims.

⁷ See – Paragraphs 2 and 3 of the Witness Statement of Rupert Kenneth Getfield, which was filed on 17 January 2023.

⁸ See – Paragraphs 4 - 5 and 22 of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023.

⁹ See – Receipt dated 8 September 1979 purportedly bearing the signatures of Mr and Mrs Getfield, witnessed by A Wilson. The contents of the receipt appear to evidence an Agreement of Sale for an acre of land at bottom land part of Good Intent for an agreed sum of One Thousand Dollars (\$1,000). This receipt also appears to indicate that the sum of Five Hundred Dollars (\$500.00) was received as part of the payment. See also, Receipt dated 22 February 1980, purportedly bearing the signatures Mr and Mrs Getfield, which states: *“Received from Louise*

- [13] It is further asserted that sometime after the land was purchased, Mrs Miller continued to send money to Louise Wynter for the purpose of having a house built on the land.¹¹ Once the construction was completed, Mrs Miller asserts that her grandmother moved into the house and that Mr Gerald Getfield later joined her. It is common ground between the parties that Ms Wynter lived on the subject property up to the time of her passing on or about 31 May 2002.¹² Ms Wynter died testate, and Mrs Miller is the Administratrix and the sole beneficiary of the estate of Louise Wynter.¹³
- [14] Mrs Miller is normally resident outside of the jurisdiction but returned to Jamaica to arrange a funeral service for her deceased grandmother. During this period, Mrs Miller asserts that she stayed at the house on the subject property for two (2) weeks. Before leaving the island, Mrs Miller contends that she gave permission to Mr Gerald Getfield to continue living at the subject property for the remainder of his natural life. It is Mrs Miller's evidence that Mr Festus Getfield was not living at the subject property at that time.¹⁴
- [15] Mrs Miller's evidence is that on this occasion, Mr Gerald Getfield instructed Mr Festus Getfield to retrieve a bag from under his bed and to give same to her [Mrs Miller]. Mrs Miller opened the said bag in the presence of both men and discovered that same contained several documents, including the Last Will and Testament of her grandmother, the late Louise Wynter, the receipts for the

Winter the sum of Four Hundred Dollars \$400.00 as part payment for land sold to her. The Balance of One Hundred Dollars \$100.00 payable on 30 August 1980." See also Receipt dated 1 September 1980, which purports to say: *"Received from Louise Winter the sum of One Hundred Dollars as balance of payment on land sold."*

¹⁰ The three receipts, each dated 8 September 1979, 22 February 1980 and 1 September 1980 respectively, are in the Bundle of Documents Not Agreed, which was filed on 27 March 2024 and were received in evidence in chronological order as Exhibits 29A-29C.

¹¹ See – Paragraphs 5, 21 and 22 of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023.

¹² See – Paragraphs 5-7 inclusive of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023.

¹³ See – The Last Will and Testament of Louise Veronica Wynter, dated 31 August 1999, attached to the Letters of Administration with Will Annexed in Suit No. 5/14 emanating from the Resident Magistrate's Court for the Parish of Manchester.

¹⁴ See – Paragraphs 8 – 11 of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023.

purchase of the subject property as well as tax receipts. Mrs Miller asserts that Mr Gerald Getfield knew that she had provided the money for the purchase of the subject property and that she later had the house built on the subject property. Mrs Miller contends that she visited the subject property in 2003, 2004, 2005 and 2006. On those visits, Mr Gerald Getfield was still living at the subject property with the assistance of caregivers.^{15 16}

[16] Mr Gerald Getfield died on or about 16 December 2007. Mrs Miller alleges that Mr Festus Getfield took possession of the subject property after the death of Mr Gerald Getfield.^{17 18}

[17] Mrs Miller asserts that Mr Festus Getfield: -¹⁹

- i. Falsely represented to the Registrar of Titles that the land in respect of which he was applying for title was given to him by Mr Gerald Getfield.
- ii. Falsely declared that the land with valuation number 103020081140 was land given to him by Mr Gerald Getfield.
- iii. Dishonestly proceeded with the application for title after he discovered that the land that he said Mr Gerald Getfield gave him a tax receipt for was not the same as the land he was claiming.

¹⁵ See – Paragraphs 11 – 14 of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023.

¹⁶ See – Paragraphs 10 – 12 of the Witness Statement of Rupert Getfield, which was filed on 17 January 2023. It is Mr Rupert Getfield's evidence that after Ms Wynter passed away, his sister, Ms Bernice Getfield had made the arrangements for Mr Gerald Getfield's care, hiring help to carry out chores like washing and cooking. Mr Rupert Getfield also averred that this hired help also slept at the house during the nights until Mr G Getfield passed in 2007. Mr Rupert Getfield also contends that his father [Mr Gerald Getfield], had lost his sight, his memory and his hearing before his death. In fact, Mr Rupert Getfield states that Mr Gerald Getfield was blind for about four (4) years before his death, and had significant difficulties remembering anyone, including his own son, Mr Rupert Getfield. Mr Rupert Getfield maintains that his father would not have been able to do business in the years prior to his death. See also, paragraph 10 of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023.

¹⁷ See – Paragraph 15 of the Witness Statement of Rupert Getfield, which was filed on 17 January 2023.

¹⁸ See – Paragraph 17 of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023.

¹⁹ See – Paragraphs 22 of the Witness Statement of Sandra Zelaya Miller, which was filed on 17 January 2023 and paragraph 14 of the Amended Particulars of Claim, which was filed on 16 March 2021.

- iv. Falsely declared that the two parcels of land were one and the same.
- v. Failed to disclose the interest and claim of both the estate of Louise Wynter and Mrs Miller herself from the Registrar of Titles, an interest of which he was aware.
- vi. Failed to cause notice of the application to be given to the estate of Louise Wynter or to herself.

The Defendant's Case

[18] For his part, Mr Festus Getfield asserts that in or around 1973, Mr Claudius Getfield sold the subject property to Mr Gerald Getfield. Mr Gerald Getfield moved onto the subject property and built the house in which he lived with Ms Wynter. Mr Festus Getfield further asserts that he visited his grandfather at the subject property in the 1970s and that he always understood the subject property to belong Gerald Getfield, and that that was the case during the lifetime of Ms Louise Wynter.²⁰

[19] Mr Festus Getfield maintains that his grandfather lived at the subject property until his passing, in 2007. Mr Festus Getfield further maintains that he began to live with his grandfather at the subject property on 31 May 2002. He asserts that he lived there from that time to present and that he did so without interruption.²¹ Mr Festus Getfield believes that the property taxes were being paid by his grandfather, until in or around 2004, when he [Festus Getfield] was put into possession of the subject property and took over the payment of same.^{22 23 24} At

²⁰ See – Paragraph 5 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024

²¹ See – Paragraph 4 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024

²² See – Paragraph 6 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024

²³ See – Exhibit 15, which contains copies of tax receipts for taxes paid for the years 1994, 1995, 1999 and 2000, in the Bundle of Agreed Documents, which was filed on 27 March 2024.

that time, the name which appeared on the Tax Roll was that of his great-grand uncle, Mr Claudius Getfield. In or around 2006, Mr Festus Getfield contends that that he visited the Mandeville Tax Office to have his name added to the Tax Roll. On 2 December 2006, Mr Festus Getfield avers that his grandfather gave him a Deed of Gift, formally conveying his [Mr Gerald Getfield's] interest in the subject property to him [Mr Festus Getfield].²⁵

[20] In December 2007, Mr Gerald Getfield died. Mr Festus Getfield asserts that since the death of his grandfather, he [Mr Festus Getfield] remained in sole, open, undisturbed and unmolested possession of the subject property for approximately thirteen (13) consecutive years. In 2009, Mr Festus Getfield commenced the process of obtaining a registered title for the subject property by utilizing his grandfather's history of ownership,²⁶ the Deed of Gift and a Survey Diagram (PE:305553),²⁷ which he asserts was commissioned by Mr Gerald Getfield himself.²⁸ On 29 July 2010, Mr Festus Getfield obtained the Duplicate Certificate of Title registered at Volume 1142 and Folio 599 of the Register Book of Titles, issued in his name, in respect of the subject property which he maintains was gifted to him by his grandfather.²⁹

²⁴ See – Exhibits 22 – 28 of the Bundle of Agreed Documents. These Exhibits are the Official Receipts for Property Taxes for the land, numbered 6650249, 0704684, 7533542, 1761538, 2531445, 11265669 and 1671149, respectively.

²⁵ See – Copy of Deed of Gift, coupled with Transfer Tax Certificate No. 0710190012 dated 2 December 2006, which purports to convey interest in the land and subject property from Mr G Getfield to Mr F Getfield contained in the Bundle of Documents Not Agreed, which was filed on 27 March 2024. See also, paragraph 6 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024.

²⁶ See – Exhibits 2 – 6 of the Bundle of Agreed Documents, which was filed on 27 March 2024, which contains a copy of letter from Ms S. Patricia Taylor, Attorney-at-Law to the Registrar of Titles, dated 29 January 2010, a copy of the application to bring land under the operation of the Registration of Titles Law, dated 7 October 2009 and the copies of the Statutory Declarations of Mr Festus Getfield, dated 7 October 2009, Ms Ena Morris, dated 27 March 2009 and Mr Albert Dawkins, dated 27 March 2009, respectively.

²⁷ This Survey Diagram bearing the Survey & Mapping Division PE: 305553 was prepared by Mr Fitz M. Henry, Commissioned Land Surveyor on 21 April 2004. See Exhibit 1 in the Bundle of Agreed Documents, which was filed on 27 March 2024.

²⁸ See – Paragraph 15 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024

²⁹ See – Paragraphs 9 – 11 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024

[21] Mr Festus Getfield maintains that at the time he made the application for a registered title,³⁰ he was unaware of any equitable interest being claimed either by Mrs Miller or the estate of Ms Louise Wynter, in the subject property.

In fact, Mr F Getfield asserts that he first became aware of Mrs Miller's claim to an interest in or around 2014, after he was served with the notification that Mrs Miller had successfully obtained a default judgment for recovery of possession of the subject property in the Parish Court.

[22] Mr Festus Getfield denies that he obtained the Certificate of Title to the subject property by fraud, nor does he admit that he made any false or fraudulent representations to the Registrar of Titles in his application for same. He maintains that his application for title was never concealed because it was duly published in the Gazette and The Daily Observer Newspaper.³¹ Mr Festus Getfield asserts that notice was also served on the owners and occupiers of the neighbouring lands and that no caveats were lodged against the registration of the title in his name.³²

[23] Further, Mr Festus Getfield avers that he has improved the subject property at his own expense, incurring expenditure of upwards of Seven Million Dollars (JMD\$7,000,000.00), to renovate and to add to the subject property, without the consent of and without any contribution from Mrs Miller.³³

[24] On this basis, Mr Festus Getfield urges the Court to declare that he has been in exclusive, open and undisturbed possession of the subject property for more than twelve (12) years to the exclusion of all others, including Mrs Miller and her predecessor in title. Additionally, Mr Festus Getfield seeks an Order restraining

³⁰ See – Exhibit 12 of the Bundle of Agreed Documents, which contains the Application to bring land under registration of Titles Law, Chapter 340.

³¹ See – Exhibit 10, which is contained in the Bundle of Agreed Documents, which was filed on 27 March 2024

³² See – Paragraphs 14 and 18 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024

³³ See – Paragraph 19 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024

Ms Miller from entering upon the subject property or in any way disturbing his possession of same.³⁴

THE ISSUE

Claim No. SU 2020 CV 03771

[25] The following issue is determinative of the Claim numbered SU 2020 CV 03771: -

- i. Whether Claim No. SU 2020 CV 03771 is statute barred.

DISCUSSION AND FINDINGS

The statutory framework

The Limitation of Actions Act of Jamaica

[26] The Limitation of Actions Act of Jamaica³⁵ does not contain any provisions which expressly provide a period of limitation by which an action for fraud must be brought. Forte P (as he then was), in the authority of **The Attorney General v Leroy Johnson**³⁶ referred to the authority of **Melbourne v Wan** and made the following pronouncements: -

“It is readily noticed that the section does not speak to any period of limitation on which such an action must be brought. To determine this fact, it is therefore necessary to refer to the Limitation of Actions Act. However, there is no provision in that Act. As Rowe, P. said, after tracing its history in Melbourne v Wan [1985] 22 J.L.R. 131 at 133:

“The present version of the Limitation of Actions Act is divided into four parts. Part I deals with limitation of actions in relation to land. Part II

³⁴ See – Paragraph 20 of the Witness Statement of Festus Getfield, which was filed on 10 July 2024

³⁵ The last amendment to this legislation was made in 2015.

³⁶ Supreme Court Civil Appeal No: 125/2002

Crown Suits limitation, Part III with Boundaries and the fourth Part with limitations in relation to debt and contract.

Apparent on the face of the Statute, then, is the fact that the Limitation of Actions Act of Jamaica does not within its own four walls contain the detailed statutory provisions limiting the time within which actions in Tort may be brought. To find the applicable statutory provision for Jamaica in this regard one must have recourse to a Statute of the United Kingdom passed three hundred and sixty-two years ago.”

As it was then (1985) so it is today in the year 2004. It is expected that after repeated suggestions by this Court, and which I now again repeat, the legislature will soon address this and legislate the time periods within which actions in tort ought to be brought.

As Rowe, P did in the cited case, so will we have to do i.e. resort to the English Limitation Act of 1623 21 James I Cap. 16. (See section 46 of the Limitation of Actions Act where the United Kingdom Statute 21 James 1 Cap. 16 is recognized and received as one of the Statutes of this Island.)

...

*The real issue to be decided in this appeal is what is the limitation period for actions on the case as for a tort, and for this it is necessary to look back to the English Statute of Limitation of 381 years ago. What are its provisions? Unfortunately, the copy of the Statute available to us is hardly legible and so I rely on the relevant extracts cited by Rowe, P., in the **Melbourne** case (supra). It is necessary to set out section 3 which is relevant:*

“3. And be it further enacted, that all actions of trespass quare clausum fregit, all actions of trespass, detinue, action sur trover, and replevin for taking away goods and cattle, all actions of account, and upon the case, other than such accounts as concern that trade of merchandise between merchant and merchant, their factors or servants, all actions of debt for arrears of rent and all actions of assault, menace, battery, wounding and imprisonment or any of them which shall be sued or brought at any time after the end of this present session of Parliament, shall be commenced

and sued within the time and limitation hereafter expressed, and not after (that is to say)

(2) The said actions upon the case (other than for slander) and the said actions for account and the said actions for trespass, debt, detinue and replevin for goods or cattle and the said action of trespass quare clausum fregit, within three years next after the end of this present session of parliament, or within six years next after the cause of such actions or suit, and not after;

(3) and the said actions of trespass, of assault, battery, wounding, imprisonment or any of them, within one year next after the end of this present session of parliament, or within four years next after the cause of such actions or suit, and not after;

(4) and the said actions upon the case for words, within one year after the end of this present session of parliament, or within two years next after the words spoken and not after.”

Rowe, P., gave a useful interpretation of this provision, with which I agree. He said:

“No uniform period of limitation was prescribed for all forms of action. A distinction was drawn between ‘actions upon the case’ on the one hand and ‘actions of trespass, assault, battery, wounding and imprisonment’ on the other hand. In respect of actions upon the case the primary rule was that a six-year period of limitation is created, whereas in assault the period was only four years. Actions upon the case were sub-divided into two groups, viz ‘slander’ and ‘other actions upon the case’. For slander the limitation period was restricted to two years next after the words were spoken, as compared with six years for ‘other actions upon the case.’”

The United Kingdom’s Limitation Act, 1980

[27] Comparatively, the United Kingdom’s Limitation Act of 1980 is significantly more extensive than the Limitation of Actions Act of Jamaica. Section 32 of the United

Kingdom Limitation Act makes provision for the postponement of the limitation period in cases of fraud, concealment or mistake. The section reads as follows: -

“32 (1) *Subject to subsection (3), subsections (3), (4A) and (4B) below, where in the case of any action for which a period of limitation is prescribed by this Act, either –*

(a) the action is based upon the fraud of the defendant; or

(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or

(c) the action is for relief from the consequences of a mistake.

The period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

References in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.

(2) For the purposes of subsection (1) above, deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

(3) Nothing in this section shall enable any action –

(a) to recover, or recover the value of, any property; or

(b) to enforce any charge against, or set aside any transaction affecting, any property;

To be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment or (as the case may be) the transaction in which the mistake was made took place.

(4) *A purchaser is an innocent third party for the purposes of this section*

—

(a) in the case of fraud or concealment of any fact relevant to the plaintiff's right of action, if he was not a party to the fraud or (as the case may be) to the concealment of that fact and did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place; and

(b) in the case of mistake, if he did not at the time of the purchase know or have reason to believe that the mistake had been made."

[28] Harrison JA, in the authority of **Medical and Immunodiagnostic Laboratory Limited v Dorett O'Meally Johnson**³⁷ had the following to say: -

*"[4] Now, the law makes it abundantly clear that an action shall not be commenced after the expiration of six years from the date on which the cause of action accrued: see the Limitation of Actions Act. A 'cause of action' has been defined as "every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court": **Read v Brown** [1888] 22 QBD 128, 131.*

[29] The learned editors of the Halsbury's Laws of England³⁸ are quoted as follows: -

"A claim for deceit is a claim in tort for which the period of limitation is six years, and in relation to equitable remedies equity followed the statute and applied the same period of limitation. However, the running of time for any claim based on fraud, or where any fact relevant to the claimant's cause of action is deliberately concealed by the defendant or his agent, does not begin until the fraud or concealment has been discovered or could with reasonable diligence be discovered. Similarly, the limitation period applied in equity by analogy will be postponed until the fraud is discovered.

...

³⁷ [2010] JMCA Civ 42

³⁸ Limitation Periods (Volume 68 (2021), paragraph 1088

Where, in the case of any claim for which an ordinary period of limitation is prescribed by the Limitation Act 1980, either:

- (1) the claim is based upon the fraud of the defendant; or*
- (2) any fact relevant to the claimant's right of action has been deliberately concealed from him by the defendant; or*
- (3) the claim is for relief from the consequences of a mistake,*

*The period of limitation does not begin to run until the claimant has discovered the fraud, concealment or mistake (as the case may be) or he could, with reasonable diligence, have discovered it. The period of limitation is postponed in such cases. These provisions cannot, however, operate to postpone the overriding time limit of ten years placed by the Limitation Act 1980 upon claims in respect of defective products.”*³⁹

[30] Harrison JA, in the authority of **Bartholomew Brown and Anor v Jamaica National Building Society**,⁴⁰ examined the law governing the limitation of actions in Jamaica. Harrison JA is quoted as follows: -

“[38] It is against this background that Morrison J came to consider JNBS’ application to strike out the claim on the ground that it was statute barred. The law governing the limitation of actions in Jamaica is not, in our view, in an entirely satisfactory state. Section 46 of the Limitations of Actions Act explicitly drives one back nearly 400 years to the United Kingdom Statute 21 James 1 Cap 16, a 1623 statute (and the first limitation statute passed in England). Section 46 acknowledges that statute as one “which has been recognized and is now esteemed, used, accepted and received as one of the statutes of this Island”. The significance of this is to be found in section 41 of the Interpretation Act, which provides as follows:

“All such laws and statutes of England as were prior to the commencement of 1 George 11 Cap. 1, esteemed, introduced, used, accepted, or received, as laws in the Island, shall continue to be laws in

³⁹ Limitation Periods (Volume 68 (2021), paragraph 1322

⁴⁰ [2010] JMCA Civ 7

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.”

[39] ...

[40] *The result of this tortuous journey is that actions based on contract and tort (the latter falling within the category of “actions on the case”) are barred by section 111, subsections (1) and (2) respectively of the 1623 statute after six years (see **Muir v Morris** (1979) 16 JLR 398,399, per Rowe JA).*

...

[43] ... *Although the equitable doctrine of fraudulent concealment does have a limited area of operation by virtue of section 27 of the Limitation of Actions Act (reproducing section 26 of the English Real Property Limitation Act 1833), it is clear by its terms that that section is only applicable to suits for the recovery of land or rent.”*

[31] The dicta of Brooks JA in the authority of **Sherrie Grant v Charles McLaughlin and Anor**⁴¹ ⁴² is instructive for present purposes: -

*“[30] It is well established in this jurisdiction that actions grounded in tort and in contract are time barred after the expiry of six years. The authority usually cited for that principle, in the case of tort, is **Melbourne v Wan** (at page 135 F). This court also discussed the principle in **Bartholomew Brown and Another v Jamaica National Building Society** [2010] JMCA Civ 7, and explained that the limitation period for both contract and tort is six years...*

...

⁴¹ [2019] JMCA Civ 4

⁴² See paragraph 15 of **Charles McLaughlin v Sherrie Grant & Ors** [2018] JMCC COMM 20, where Batts J stated: “I asked, but neither could provide the statutory basis for a six (6) year limitation on fraud. I have not found it; whether it exists or not, however, the amended plea is for fraudulent misrepresentation and unjust enrichment. These are equitable claims. If barred, it would be by reason of laches. Jamaica’s Limitation of Actions Act was enacted in 1881. It does not speak to a limitation bar for torts, generally, as does the English Act of 1939. Negligence has a time bar of six (6) years because it is an action “on the case”, see **Lance Melbourne v Christina Wan** (1985) 22 JLR 131. It seems to me, as at presently advised, that the equitable claims of unjust enrichment and fraudulent misrepresentation here in Jamaica, have no statutory time bar. The time bar on a simple contract is to be found in section 46 of the Limitation of Actions Act which adopts and applies an English statute which is some 400 years old that is 21 James 1 Cap 16. Judges in this Supreme Court and Court of Appeal have repeatedly, and apparently in vain, called for its revision.”

[36] ***Brown and Another v Jamaica National Building Society*** is important for another principle, which is relevant to this case. At paragraph [43] of his judgment, Harrison JA pointed out that the equitable doctrine of fraudulent concealment does not apply to extend the limitation period in respect of actions in tort and contract. He said at paragraph [43]:

“...Although the equitable doctrine of fraudulent concealment does have a limited area of operation by virtue of section 27 of the Limitation of Actions Act (reproducing section 26 of the English Real Property Limitation Act 1833), it is clear that by its terms that that section is only applicable to suits for the recovery of land or rent...”

[37] In their work, *Limitation of Actions*, published in 1940, the learned authors, Preston and Newsom seem to be of a similar view. They assert that, prior to the Judicature Act of 1873 in England, fraud did not postpone the running of time for the application of the Limitation of Actions Act. The learned authors so stated at page 356:

“At common law neither fraud as part of a cause of action nor the fraudulent concealment of a cause of action was a ground for postponing the running of time: *Imperial Gas Co. v London Gas Co.* (1854), 10 Ex. 39; *Hunter v Gibbons* (1856), 1 H. & N. 459.”

That opinion is accepted as being correct. As will be demonstrated below, however, the introduction of the Judicature Acts allowed for the postponement of the running of time in the cases of fraudulent concealment of the right of action. That was as a result of the availability of equitable remedies, despite a claim being ostensibly a common law one.

[38] Preston and Newsom contend, at page 355, that the situation in equity was different from that at common law. In equity, they correctly point out, fraud postponed the running of time. They state:

“The equitable doctrine was that the effect of fraud was to postpone the running of time until the person damnified thereby had discovered it or ought to have done so. So stated, the doctrine applied both to (a) cases of actions based on fraud, and (b) cases where a right of action was

fraudulently concealed. In neither case was the plaintiff barred until six years had expired after the actual or notional discovery: see Oelkers v Ellis [1914] 2 K.B. 139 at p. 150...

*[39] The English Limitation Act, 1939, has ameliorated the situation with regard to claims in common law. Section 26 of that statute postpones the running of time until the victim of the fraud discovers the fraud. The legislature of this country, however, despite nudges by this court in both **Melbourne v Wan** and **Brown and Another v Jamaica National Building Society**, has failed to pass a modern statute addressing limitations of actions. We, therefore, continue to struggle with the 400-year-old, 1623 Limitation Act, received from England (see section 46 of the Limitation of Actions Act).*

[40] Section 27 of the Limitation of Actions Act allows the postponement of the running of time in the case of concealment by fraud but limits it to the recovery of land or rent. The section does not apply otherwise."

The statutory definition of fraud

[32] Notably, "fraud" is not defined in the Registration of Titles Act, nor is there an expressly stated statutory time frame within which a party is expected to bring a claim for fraud. Jamaican courts⁴³ have accepted the following definition of fraud as posited by Lord Lindley in the authority of **Assets Company Ltd. v Mere Roihi**:⁴⁴

"...by fraud in these Acts is meant actual fraud, i.e., dishonesty of some sort, not what is called constructive or equitable fraud – an unfortunate expression and one very apt to mislead, but often used, for want of a better term, to denote transactions having consequences in equity similar to those which flow from fraud. Further, it appears to their Lordships that the fraud which must be proved in order to invalidate the title of a registered purchaser for value, whether he buys

⁴³ See – **Thomas Anderson v Monica Wan (as personal representative in the Estate of Iris Anderson)** [2020] JMCA Civ 41. See also, **Waimiha Sawmilling Company Ltd (In Liquidation) v Waione Timber Co Ltd**, [1926] AC 101, 106, another decision of the Privy Council on appeal from New Zealand, where it was stated: "*If the designed object of a transfer be to cheat a man of a known existing right, that is fraudulent, and so also fraud may be established by a deliberate and dishonest trick causing an interest not to be registered and thus fraudulently keeping the register clear... each case must depend upon its own circumstances. The act must be dishonest...*".

⁴⁴ [1905] A.C. 176 at p 210

from a prior registered owner or from a person claiming under a title certified under the Native Land Acts, must be brought home to the person whose registered title is impeached or to his agents. Fraud by persons from whom he claims does not affect him unless knowledge of it is brought home to him or his agents. The mere fact that he might have found out fraud if he had been more vigilant, and had made further inquiries which he omitted to make, does not of itself prove fraud on his part. But if it be shewn that his suspicions were aroused, and that he abstained from making inquiries for fear of learning the truth, the case is very different, and fraud may be properly ascribed to him. A person who presents for registration a document which is forged or has been fraudulently or improperly obtained is not guilty of fraud if he honestly believes it to be a genuine document which can be properly acted upon."

Findings

The relevant limitation period for fraud

- [33] This Court accepts the submissions of Ms Gayle that the right to bring an action for concealed fraud first accrues at the time when the fraud was discovered or may have been discovered with reasonable diligence. It is equally accepted that the right to bring an action for concealed fraud is within six (6) years from the time when the fraud was discovered or may have been discovered with reasonable diligence. In the present instance, the Court observes that notice of Mr Festus Getfield's application for a registered title in respect of the subject property was provided in the Daily Observer in the months of April and May 2010. The Court also observes that Notices were served on the owners and occupiers of the lands contiguous to the subject property, as is required by sections 33 and 36, respectively, of the Registration of Titles Act.
- [34] The Court accepts the submission of Ms Gayle that Mrs Miller ought properly to have discovered the alleged concealed fraud on the part of Mr Festus Getfield and that she [Mrs Miller] ought to have done so by 2010 or 2011. This, considering her assertion that she always exercised possession of and control over the subject property and that she paid the property taxes in respect of the subject property.

- [35] The Court equally accepts the submission of Ms Gayle that if Mrs Miller were paying the property taxes in respect of the subject property, as she avers, then she ought reasonably to have discovered that Mr Festus Getfield was also paying property taxes in respect of the subject property. The Court finds that this in turn ought reasonably to have propelled Mrs Miller to act. This would have led her to discover the alleged concealed fraud on the part of Mr Festus Getfield and to have done so in 2010 or 2011.
- [36] In those circumstances, the Court accepts the submission of Ms Gayle that the relevant limitation period would have expired before the initiation of the Claim numbered SU 2020 CV 03771. In the result, the Court finds that the Claim numbered SU 2020 CV 03771 is statute barred.

Whether the expiration of the relevant limitation period was pleaded by the Defendant

- [37] The Court must however consider whether the expiration of a relevant limitation period was pleaded by Mr Festus Getfield.
- [38] A careful examination of the Defence, which was filed on 28 September 2021, will reveal that the expiration of a relevant limitation period was never pleaded by Mr Festus Getfield. In fact, this submission was made for the first time in the Defendant's Closing Submissions, which were filed on 29 November 2024.
- [39] The law is clear that if a defendant decides not to plead a limitation defence and to fight the case on the merits he should not be permitted to fall back on a plea of limitation as a second line of defence at the end of the trial.⁴⁵ For that reason, the Court finds that Mr Festus Getfield is precluded from relying on a limitation defence.

The claim for fraud

- [40] The Court finds however, that, on a preponderance of the evidence, Mrs Miller has failed to establish that Mr Festus Getfield acted with dishonesty or with a

⁴⁵ See – *Ketteman v Hansel Properties* [1987] 1 AC 189; *Topaz Jewellers and Raju Khemlani v National Commercial Bank Jamaica Limited* [2011] JMCA Civ 20

dishonest intent in his application for title under the Registration of Titles Act, in respect of the subject property.

- [41]** The authorities make it clear that fraud must not only be strictly pleaded but must be strictly proved by those who assert its existence. This must be proved on a balance of probabilities and on the clearest and most cogent indisputable evidence.
- [42]** It is clear from a careful reading of the Registration of Titles Act that the statute does not define fraud. The threshold test to establish the existence of fraud within the context of the Registration of Titles Act is actual fraud or dishonesty. A claimant is therefore required to prove actual fraud or dishonesty of some sort on the part of the registered proprietor and that the defendant's actions or conduct were designed to cheat him of a known existing right. Ultimately, a claimant who alleges fraud must prove actual fraud or actual dishonesty or moral turpitude on the part of a defendant, the object of which was to deprive the claimant of a right which the defendant knew that the claimant had in the property.
- [43]** In this regard, the Court finds as a fact that the Claimant, Mrs Miller, has failed to prove the following on a preponderance of the evidence: -
- i. That Mr Gerald Getfield did not gift the subject property to Mr Festus Getfield by way of a Deed of Gift.
 - ii. That Mr Gerald Getfield was blind and/or senile and therefore incapable of executing a Deed of Gift.
 - iii. That Mr Festus Getfield did not honestly believe that the subject property was gifted to him by Mr Gerald Getfield.
 - iv. That Mr Festus Getfield has not consistently paid the property taxes in respect of the subject property from the time of the death of Mr Gerald Getfield.

- v. That Mr Festus Getfield knew that the land in respect of which he sought to obtain a Certificate of Title was in relation to land which he had not been gifted by Mr Gerald Getfield.
- vi. That there was a second parcel of land on earth which was owned by Mr Gerald Getfield and that it was that second parcel of land which was gifted to Mr Festus Getfield by Mr Gerald Getfield.

Claim No. SU 2021 CV 03074

THE ISSUES

[44] In respect of Claim No. SU 2021 CV 03074, the Court must determine the following issue: -

- i. Whether Mrs Miller can successfully recover possession of the subject property.

[45] To determine the issue identified above, the following sub-issues must also be resolved: -

- i. Whether Mrs Miller has the requisite standing to bring the claim for recovery of possession which is contained in Claim No. SU 2021 CV 03074.
- ii. Whether Mr Festus Getfield has demonstrated on a balance of probabilities that he has been in exclusive, open and undisturbed possession of the subject property for more than twelve (12) continuous years.

THE LAW

The principle of the indefeasibility of a registered title

[46] The principle of the indefeasibility of a registered title is one of the fundamental principles that forms the bedrock of the system of registration of land system.

Sections 68, 70, 71 and 161 of the Registration of Titles Act (“the ROTA”) provide the following⁴⁶: -

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

...

70. Notwithstanding the existence in any other person of any estate or interest, whether derived by grant from the Crown or otherwise, which but for this Act might be held to be paramount or to have priority, the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in case of fraud, hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such incumbrances as may be notified on the folium of the Register Book constituted by his certificate of title, but absolutely free from all other incumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a prior registered certificate of title, and except as regards any portion of land that may by wrong description of parcels or boundaries be included in the certificate of title or instrument evidencing the title of such proprietor not being a purchaser for valuable consideration or deriving from or through such a purchaser:

...

71. Except in the case of fraud, no person contracting or dealing with, or taking or proposing to take a transfer, from the proprietor of any registered land, lease,

⁴⁶ See also sections 162 and 168 of the ROTA

mortgage or charge, shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for, which such proprietor or any previous proprietor thereof was registered, or to see to the application of any purchase or consideration money, or shall be affected by notice, actual or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding; and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

...

161. No action of ejectment or other action, suit or proceeding, for the recovery of any land shall lie or be sustained against the person registered as proprietor thereof under the provisions of this Act, except in any of the following cases, that is to say –

(a) ...

(b) ...

(c)...

(d) the case of a person deprived of any land by fraud as against the person registered as proprietor of such land through fraud, or as against a person deriving otherwise than as a transferee bona fide for value from or through a person so registered through fraud;

(e) ...

And in any other case than as aforesaid the production of the certificate of title or lease shall be held in every court to be an absolute bar and estoppel to any such action against the person named in such document as the proprietor or lessee of the land therein described any rule of law or equity to the contrary notwithstanding.”

- [47]** Section 158(1) of the ROTA empowers a Judge to direct the Registrar of Titles to cancel or correct any certificate of title or instrument or any entry or memorandum in the Register Book, relating to such land, estate or interest and to issue, make or substitute such certificate of title, instrument, entry or memorandum or do such other act, as the circumstances of the case may

require. The Registrar of Titles shall give effect to that direction. In section 158(2) of the ROTA, the Judge has a similar power to either (a) direct the Registrar of Titles to cancel the certificate of title to the land and to issue a new certificate of title and the duplicate thereof in the name of the person specified for the purpose in the order (b) to amend or cancel any instrument, memorandum or entry relating to the land in such manner as appears proper to the court or a Judge.

The Limitation of Actions Act

[48] For causes of action that arise concerning the recovery of land and rent, sections 3 and 4 of the Limitations of Actions Act provide that these actions ought to be brought within twelve (12) years after it first accrued.

[49] Sections 8, 27 and 30 of the Limitation of Actions Act provide as follows: -

“8. An administrator claiming the estate or interest of the deceased person of whose chattels he shall have been appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

...

27. In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered:

Provided, that nothing in this section contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents on account of fraud, against any bona fide purchaser for valuable consideration who has not assisted in the commission of

*such fraud and who at the time that he made the purchase did not know, and had no reason to believe, that any such fraud had been committed.*⁴⁷

30. *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."*

The Real Property Representative Act

[50] Section 3 of the Real Property Representative Act provides: -

"3. - (1) Where real estate is vested in any person, without a right in any other person to take by survivorship, it shall on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, as if it were a chattel real vesting in them or him.

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate."

The law in relation to adverse possession

[51] It is trite law that for a party to mount a successful claim in adverse possession,⁴⁸ he must demonstrate a sufficient degree of physical custody and control, (factum possessionis),⁴⁹ that is, factual possession of the property as well as an intention

⁴⁷ See – Paragraphs 58 – 61 of **Ray Electra Jobson-Walsh and Gilbert Jobson v Administrator General of Jamaica, Baron Stephens and Ors** [2015] JMSC Civ 89 per Simmons J

⁴⁸ See – Page 223 of the 4th edition of the Commonwealth Caribbean Property Law authored by Gilbert Kodilinye. He states that: *"The effect of adverse possession is that a person who is in possession as a mere trespasser or 'squatter' can obtain a good title if the true owner fails to assert his superior title within the requisite limitation period."*

⁴⁹ The land should have been dealt with as an occupying owner of that type of land might normally be expected to do and no other person should have done so.

to exercise such custody and control on one's own behalf and for one's own benefit, that is, the intention to possess (*animus possidendi*).⁵⁰ A person intending to dispossess a paper owner of their right to property must be able to demonstrate that he has been in open, continuous, undisturbed and exclusive⁵¹ factual and intentional possession of that property for a minimum period of twelve (12) years.⁵² ⁵³ Time begins to run against the paper owner once he becomes entitled to commence legal proceedings against the adverse possessor, that is, when the person enters into 'adverse possession'.⁵⁴ The court is usually engaged in a fact-finding exercise to determine whether an adverse possessor has successfully dispossessed a paper owner or registered proprietor.⁵⁵ This can be attributed to the fact that adverse possession runs counter to the principle of the indefeasibility of a registered title.⁵⁶

Factual possession

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

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

⁵⁰ **Buckinghamshire County Council v Moran** (1990) Ch. 623, 642: "*The emphasis is on possession and not on an intention to own or acquire ownership. This requirement of animus possidendi can be inferred from acts of possession. Where therefore the acts of possession are certain unequivocal and affirmative, the requirement of animus possidendi loses its importance as an ingredient of a claim of adverse possession.*"

⁵¹ See – Page 290 of the *Commonwealth Caribbean Land Law*, '*Possession is single and exclusive: "plures eandem rem in solidum possidere non possunt" – exclusivity is of the essence of possession*'.

⁵² If a person is in possession of land or property with the permission of the true owner, his possession cannot be adverse. It should be noted that possession in which the landowner acquiesces, may be adverse.

⁵³ See – **Sanders v Sanders** (1881) Ch D 373: Once a full period of twelve (12) years has run, no payment or acknowledgment can revive any right to recover land, for the lapse of time will have extinguished not only the owner's remedies for recovering the land but also his right to it.

⁵⁴ See – Page 269 of the *Commonwealth Caribbean Land Law* authored by Sampson Owusu, 2007 Routledge-Cavendish

⁵⁵ See – **Rains v Buxton** (1880) 14 Ch.D. 537,539, where the court determined that it is not necessary for the paper owner to know he has been dispossessed.

⁵⁶ See – Paragraph 35-001, page 1457 of the 8th edition of the Megarry and Wade, *The Law of Real Property*.

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

The character and sufficiency or degree of user necessary to constitute possession so as to pass title under the statute therefore depends on many factors, and thus renders the concept a relative term. It is a question of fact depending on all the circumstances of the case, not only on the physical characteristics of the land, the appropriate and natural uses to which it can be put, but also the conditions and the habits and ideas of the people of the locality, and even to a greater extent the course of conduct reasonably expected of an owner of that type of property having due regard to his interests. Consequently, acts of possession which may amount to possession in one case may be wholly insufficient to constitute possession in another."

- [53] Their Lordships in **JA Pye (Oxford) Ltd. v Graham**⁵⁷ approved the following passage from the judgment of Slade J in **Powell v McFarlane**: - ⁵⁸

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

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

"The question of animus possidendi is, in my judgment, one of crucial importance in the present case. An owner or other person with the right to possession of land will be readily assumed to have the requisite intention to possess unless the contrary is clearly proved. This, in my judgment, is why the slightest acts done by

⁵⁷ [2002] UKHL 30

⁵⁸ (1979) 38 P & CR 452

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

...

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

- [55] Nor is it necessary for the adverse possessor to have had an intention to dispossess or exclude the paper owner. The authorities have established that the relevant intention is not an 'animus dispossessendi' or a conscious intention to dispossess the true owner. The only intention which must be demonstrated is an intention to occupy and use the land as one's own.
- [56] The approach to be adopted by the court, in determining a claim for adverse possession, has been comprehensively stated by Sykes J (as he then was) in the authority of **Lois Hawkins (Administratrix of Estate of William Walter Hawkins, Deceased, Intestate) v Linette Hawkins McIniss**.⁵⁹ At paragraphs 12 and 13, Sykes J is quoted as follows: -

*"[12] The law in this area is no longer in doubt. It was most recently expounded by the Court of Appeal in **Fullwood v Curchar** [2015] JMCA Civ 37. This court cannot improve on the clarity, precision, and exposition of*

⁵⁹ [2016] JMCA Civ 14

McDonald Bishop JA (Ag). The court will simply refer to paragraphs [29] to [54]. From these passages the following propositions are established:

- (i) the fact that a person's name is on a title is not conclusive evidence that such a person cannot be dispossessed by another, including a co-owner.*
- (ii) the fact of co-ownership does not prevent one co-owner from dispossessing another.*
- (iii) sections 3 and 30 of the Limitation of Actions Act operate together to bar a registered owner from making any entry on or bringing any action to recover property after 12 years if certain circumstances exist.*
- (iv) in the normal course of things where the property is jointly owned under a joint tenancy and one joint tenant dies, the normal rule of survivorship would apply, and the co-owner takes the whole.*
- (v) however, section 14 of the Limitation of Actions Act makes the possession of each co-tenant separate possessions as of the time they first become joint tenants with the result that one co-tenant can obtain the whole title by extinguishing the title of the other co-tenant.*
- (vi) the result of sections 3, 14 and 30 of the Limitation of Actions Act is that a registered co-owner can lose the right to recover possession on the basis of the operation of the statute against him or her with the consequence that if one co-owner dies the normal rule of survivorship may be displaced and a person can rely on the deceased co-owner's dispossession of the other co-owner to resist any claim for possession.*
- (vii) when a person brings an action for recovery of possession then that person must prove their title that enables them to bring the recovery action and thus where extinction of title is raised by the person sought to be ejected, the burden is on the person bringing*

the recovery action to prove that his or her title has not been extinguished thereby proving good standing to bring the claim.

- (viii) the reason for (vii) above is that the extinction of title claim does not simply bar the remedy but erodes the very legal foundation to bring the recovery action in the first place.*
- (ix) dispossession arises where the dispossessor has a sufficient degree of physical custody and control over the property in question and an intention to exercise such custody and control over the property for his or her benefit.*
- (x) the relevant intention is that of the dispossessor and not that of the dispossessed.*
- (xi) in determining whether there is dispossession there is no need to look for any hostile act or act of confrontation or even an ouster from the property. If such act exists it makes the extinction of title claim stronger, but it is not a legal requirement.*
- (xii) the question in every case is whether the acts relied on to prove dispossession are sufficient.*

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

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

"In order to prevent an adverse possessor from acquiring an indefeasible title under the Limitation Acts, the paper owner must show that, before expiry of the

limitation period, he performed acts amounting to dispossession of the squatter and resumption of possession by him. Mere entry upon the land is not sufficient.

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

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

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

DISCUSSION AND FINDINGS

[59] The Court accepts the submission of Ms Gayle that this Claim was initiated before Mrs Miller was duly appointed the personal representative of the Estate of Louise Wynter by way of a Grant of Letters of Administration. The Court observes that the Claim was initiated in the then Resident Magistrate's Court (now the Parish Court), on 25 July 2014. Letters of Administration were granted in Louise Wynter's Estate on 21 September 2014.

[60] In those circumstances, the Court is constrained to find that Mrs Miller did not have the requisite locus standi to bring this Claim.

The counterclaim

[61] In respect of the Counterclaim, the Court finds that the following are facts: -

- i. That Mr Festus Getfield has been in exclusive, open and undisturbed possession of the subject property for more than twelve (12) continuous years, to the exclusion of all others, including Mrs Miller.
- ii. That Mr Festus Getfield paid the property taxes in respect of the subject property.
- iii. That Mr Festus Getfield carried out acts of improvement to and conservation of the subject property.
- iv. That Mr Festus Getfield sought to bring the subject property under the operation of the Registration of Titles Act.
- v. That Mr Festus Getfield applied for and obtained a Certificate of Title in respect of the subject property.
- vi. That Mr Festus Getfield provided notice to the owners and occupiers of the lands contiguous to the subject property of his intention to apply for and obtain a Certificate of Title in respect of the subject property.
- vii. That Mrs Miller returned to the subject property in or around 2002, on the death of her grandmother, Louise Wynter.

- viii. That, thereafter, Mrs Miller did not return to the subject property until in or around 2006.
- ix. That Mrs Miller has not been in open, undisturbed possession of the subject property, to the exclusion of all others, including Mr Festus Getfield.
- x. That Mrs Miller has not exercised any acts of ownership over the subject property, after the death of Mr Gerald Getfield, in or around 2007, whether by herself or through the possession or occupation of someone else.

[62] Finally, the Court declines to make an Order for injunctive relief against Mrs Miller. The Court finds that there is no evidence before it based on which it could properly grant an Order for injunctive relief against Mrs Miller.

DISPOSITION

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

1. Judgment is entered in favour of the Defendant, Festus Getfield, against the Claimant, Sandra Zelaya-Miller, in the Claim numbered SU 2021 CV 03771.
2. In respect of the Claim numbered SU 2021 CV 03704, the Claimant, Sandra Zelaya-Miller, does not have the requisite locus standi to bring this Claim.
3. The Defendant, Festus Getfield, has been in exclusive, open and undisturbed possession of ALL THAT parcel of land consisting of

1496.92 square meters and situated at Good Intent District, Harry Watch P.A., in the parish of Manchester, being the land comprised at Certificate of Title registered at Volume 1442 and Folio 599 of the Register Book of Titles to the exclusion of all others, including the Claimant, Sandra Zelaya-Miller, for more than twelve (12) continuous years.

4. The costs of the consolidated Claim are awarded to the Defendant against the Claimant and are to be taxed if not sooner agreed.
5. The Defendant's Attorneys-at-law are to prepare, file and serve these Orders.