



[2026] JMSC Civ 112

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2025CV04319

BETWEEN	VELORIS JOYCE MILLER	CLAIMANT/ APPLICANT
AND	MALVERN HUTCHINSON	1st DEFENDANT/1st RESPONDENT
AND	TASHANA ALICY HUTCHINSON	2nd DEFENDANT/ 2nd RESPONDENT

IN CHAMBERS

Mr. Nickardo Lawson instructed by Lawson Marie Chambers for the Claimant/Applicant

Ms Shanique Scott instructed by McLeod Scott Law for the Defendants/Respondents

Dates Heard: March 23, 2026, June 8, 2026 and July 21, 2026

**Injunction - Interim Injunction - Factors to be considered in granting an interim
injunction - Whether there is a serious issue to be tried - Whether damages are an
adequate remedy - Balance of convenience-adverse possession - Proprietary
estoppel**

K Henry-Anderson J (Ag)

Background

[1] The applicant Veloris Joyce Miller has occupied 35 Padmore Drive, Kingston 10 Saint Andrew registered at Volume 1162 Folio 493 of the Register Book of Titles (the property) since June 24, 1985 when she was permitted to reside there by her grandaunt Eliza Marsden. Prior to her death in 2001, Ms. Marsden owned the property jointly with the 1st respondent Malvern Hutchinson. On May 19, 2025, Ms. Marsden's death was noted on the certificate of title and on the same date the property was transferred by way of gift to the 2nd respondent Tashana Alicy Hutchinson and Malvern Hutchinson. Thereafter, the applicant was served with two notices for her to vacate the property on or before October 31, 2025 and on or before November 7, 2025. In response to these notices, the applicant by way of letter dated November 6, 2025 informed the respondents of her intention to commence legal proceedings. On December 8, 2025 the applicant filed a Fixed Date Claim Form along with an affidavit in support in which she seeks certain declarations and orders.

[2] These declarations in substance are:

- (i) that the claimant is the owner of the property or part thereof in fee simple by virtue of adverse possession and is therefore entitled to all or a part of the property;
- (ii) that the joint tenancy by which Ms. Marsden and the 1st defendant held the property, was severed by agreement and/or the conduct by Ms. Marsden and the 1st defendant during Ms. Marsden's lifetime, such that, at the date of her death on September 4, 2001, the property was held in equal shares as tenants in common;
- (iii) that the transfer of the gift of the property registered on May 19, 2025 from the 1st defendant to himself and the 2nd defendant, is void and of no legal effect.

Alternatively, if the court does not find for the claimant regarding the orders for adverse possession.

- (iv) that the claimant has acquired an equitable or proprietary interest in the property of at least 50%.
- (v) that the defendants are estopped from denying her interest.

Alternative to the above declarations, the claimant seeks the following orders:

- (vi) an order directing the defendants to compensate the claimant at fair market value for her equitable interest in the property and/or the dwelling house; or
- (vii) an order that the claimant be permitted to occupy the part of the property and section of the dwelling house she currently occupies along with her assigns, or such other person(s) of her choosing, undisturbed for her lifetime.
- (viii) a permanent injunction preventing the defendants from trespassing or otherwise interfering with the claimant's occupation and access to the property
- (ix) orders to the Registrar of Titles to give effect to the declarations being sought above.

[3] On December 8, 2025, along with the Fixed Date Claim Form referred to above, the applicant had also filed a Notice of Application for Court Orders with an affidavit in support in which she sought the following orders:

1. An injunction restraining the defendants/respondents whether by themselves, and/or their agents, assignees, successors and/or any other person acting on or in accordance with their instructions, or otherwise howsoever, from the date of any order

made in accordance with this Notice of Application for Court Orders, from taking any steps to evict or trespass upon or take any other steps however to interfere with the claimant's occupation and/or use of the land and dwelling house situate at 35 Padmore Drive, Kingston 10, Saint Andrew which land is registered at Volume 1162 Folio 493 in the Register Book of Titles pending the outcome of these proceedings being the Fixed Date Claim Form filed herein.

2. An injunction restraining the defendants/respondents whether by themselves, and/or their agents, assignees, successors and/or any other person acting on or in accordance with their instructions, or otherwise howsoever, from the date of any order made in accordance with this Notice of Application, from taking any steps to sell or deal with or otherwise dispose of the property, pending the outcome of these proceedings.
3. The time for serving this Notice of Application is abridged.
4. Costs of the Notice of Application be costs in the claim.
5. Such further and other reliefs as this Honourable Court deems just.

[4] On January 16, 2026, the applicant filed another affidavit in support of her application in similar terms as her previous affidavit filed on December 8, 2025, as it was determined by the court that the prior affidavit had not been in compliance with section 22(2)(c) and 22(4) of the Judicature (Supreme Court) Act. This affidavit sets out the basis on which the applicant seeks the interim injunction. To her affidavit, the claimant also exhibited the two notices to quit and the November 6, 2025 letter to the respondents referred to in paragraph 1 of this ruling.

[5] Submissions were filed by the parties and though the hearing of the application began on March 23, 2026, it was part-heard and adjourned to June 8, 2026 for the applicant to file and serve a supplemental affidavit in support. This was filed on April 30, 2026, it exhibited the certificate of title for the subject property. It should be noted that when the interim injunction came on again for hearing on June 8, 2026, it was listed along with the first hearing of the claim, and by then, the 1st respondent's affidavit in response to the Fixed Date Claim Form had been filed on May 14, 2026. Oral arguments were heard and ruling was reserved on the application to July 21, 2026. These are the reasons for the court's ruling on the application.

Law - Interim Injunction

[6] In determining whether to grant or refuse an interim injunction the court is guided by the principles set out in the case of **American Cyanamid v Ethicon Ltd** [1975] AC 396. These are:

- (i) Is there a serious issue to be tried?
- (ii) Are damages an adequate remedy?
- (iii) Does the balance of convenience favour the grant or refusal of the injunction?

[7] I also bear in mind the purpose of an interim injunction as stated by Lord Hoffman at paragraph 16 in **National Commercial Bank Jamaica Ltd v Olint** [2009] UKPC 16.

*"It is often said that the purpose of an interlocutory injunction is to preserve the status quo, but it is of course impossible to stop the world pending trial. The court may order a defendant to do something or not to do something else, but such restrictions on the defendant's freedom of action will have consequences, for him and for others, which a court has to take into account. The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. **At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a***

just result. *As the House of Lords pointed out in American Cyanamid Co v Ethicon Ltd [1975]AC396, that means that if damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction. Likewise, if there is a serious issue to be tried and the plaintiff could be prejudiced by the acts or omissions of the defendant pending trial and the cross undertaking in damages would provide the defendant with an adequate remedy if it turns out that his freedom of action should not have been restrained, then an injunction should ordinarily be granted."*

[8] My first consideration is therefore, whether there is a serious question to be tried. If the court finds that there is no serious issue to be tried, then the interim injunction ought properly to be refused. At page 510e, Lord Diplock in dealing with this issue in **American Cyanamid Co. v Ethicon Ltd** [1975] 1 All ER 504 said the court should be satisfied that the claim is not frivolous or vexatious. He stated further that:

"It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial. One of the reasons for the introduction of the practice of requiring an undertaking as to damages on the grant of an interlocutory injunction was that 'it aided the court in doing that which was its great object, viz abstaining from expressing any opinion upon the merits of the case until the hearing' (Wakefield v Duke of Buccleuch ((1865) 12 LT 628 at 629)). So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

[9] In **Reliance Group of Companies Ltd v Ken's Sales and Marketing Ltd v Christopher Graham** [2001] JMCA Civ 12 Hibbert JA (ag) (as he then was) at paragraph 39 relied on *In Re Lord Cable (deceased) Garratt v Waters*, where Slade J at page 431 stated:

“American Cyanamid Co. v Ethicon Limited may have led prospective plaintiffs to the belief, perhaps partially justified, that it is not necessary for them to adduce affidavit evidence in support of a motion for an interlocutory injunction of such a precise and compelling nature as might have been required before that decision. Nevertheless, in my judgment it is still necessary for any plaintiff who is seeking interlocutory relief to adduce sufficiently precise factual evidence to satisfy the court that he has a real prospect of succeeding in his claim for a permanent injunction at the trial. If the facts adduced by him in support of his motion do not by themselves suffice to satisfy the court as to this, he cannot in my judgment expect it to assist him by inventing hypotheses of fact on which he might have a real prospect of success.”

[10] There must therefore be material before the court at the hearing of the application for the interim injunction to aid the court to determine whether the applicant has a real prospect of succeeding in her claim for a permanent injunction.

Serious issue to be tried- adverse possession

Applicant's submissions

[11] Counsel for the applicant, submitted that there are serious triable issues between the applicant and the respondents as the respondents by their conduct believe that they lawfully own the entire property while the applicant believes that she has acquired an interest in the property which the court ought to recognize. Counsel submitted the issues to be tried are whether the applicant has acquired an interest by adverse possession or whether the applicant is a licensee with a proprietary interest and if so, the extent of her interest.

[12] Counsel argued that the applicant has satisfied the standard to establish adverse possession of the property or a discernable portion thereof. He asked the court to consider that the applicant has a sufficient degree of legal possession for the minimum statutory period to dispossess the 1st respondent who upon the operation of right of survivorship, acquired sole legal entitlement to the property as the time for the purpose of adverse

possession commenced in 2001, upon the death of Eliza Marsden. Counsel cited in support of his argument **J A Pye (Oxford) Ltd and another v Graham and another** [2002] UKHL 30. Accordingly, any rights that the respondents may have had to recover possession from the applicant were extinguished by 2013 upon the operation of the Limitations of Action Act, the 1st respondent, having done nothing to remove the applicant who remained in occupation and continued acts of possession for over 25 years before the notice was served. Counsel relied on **Recreational Holdings 1 (Jamaica) Limited v Lazarus** [2016] UKPC 22.

[13] Additionally, counsel contended that the fact that the applicant initially entered the property upon the instructions of the deceased Eliza Marsden who at the time held the property as joint tenant with the 1st respondent does not and cannot defeat her claim for adverse possession against the current paper owners. He cited **Gootmi Ramnarace v Harrypersad Lutchman** [2001] UKPC 25 in support of this argument.

[14] Counsel further asked the court to look at the nature of the property and its occupation. Counsel highlighted that the property comprises a large lot of land on which rests a large dwelling house. The normal occupation of the lot is such that the applicant has always occupied one section of the dwelling house and the 1st respondent the other section. He pointed out that after Eliza Marsden's death, as part of the sectioning of the parcel of land to mirror the two distinct sections of the dwelling house, the applicant erected a gateway and barriers enclosing her section of the lot and of the dwelling house. Counsel further pointed out to the court that the entrance to the property is by a main gate but by erecting this fence and a gate enclosing her part of the property she has also barred access to half of the dwelling house and yard and has limited access to her and her lawful visitors.

[15] Mr Lawson also pointed to further acts of ownership by the applicant such as the planting and maintaining of a garden in her area of the lot by her or a gardener which she pays. The holding of contracts with utility companies Jamaica Public Service and FLOW for her separate section of the property and her permitting family members and visitors to remain on her section of the property undisturbed while she is away overseas.

Respondents' submissions

[16] Counsel for the respondents, contended that the applicant has the evidential burden to satisfy the court that she has a real prospect of success in obtaining a permanent injunction at the trial and based on the evidence presented to this court cannot cross the first hurdle of showing that there is a serious issue to be tried.

[17] Counsel relied on the Court of Appeal decision of **Recreational Holdings (Jamaica) Ltd v Carl Lazarus and others** [2014] JMCA Civ 34 for the requisite test for adverse possession. She argued in reliance on paragraph 55 of that judgment where Morrison JA concluded that “*adverse possession cannot be claimed by a person whose possession was obtained and continued by virtue of the consent, grant or otherwise from the true owner whom he claimed to have dispossessed*”. It was also counsel’s argument that, unless and until, that permission is revoked, the occupier’s possession is legally referable to the licence and therefore cannot be adverse. Counsel further submitted that the applicant’s evidence that she moved onto the property with her grandaunt’s knowledge and permission is fatal to any claim for adverse possession. Further, counsel, referring to **Clarke v Swaby** [2007] UKPC 1, argued that the authorities make it clear that an occupation that begins with permission cannot become adverse simply through the passage of time.

[18] Ms Scott further submitted that the applicant’s affidavit does not identify any act, date or circumstance that changed her permissive occupancy into hostile possession. On the contrary, the applicant’s evidence is that she believed she had the right to occupy the property because of her relationship with her grandaunt and the assurances the grandaunt had allegedly made to her. Counsel submitted that a person occupying land under the belief that they are there with the approval or consent of the owner cannot simultaneously assert possession adverse to that owner. She relies on the reasoning of Pusey J in **Keith Seivwright v Dennis Seivwright (Executor for the Estate of Alice Seivwright)** [2017] JMCA Civ 28 to illustrate the point.

[19] It was also submitted that even if the applicant was permitted to occupy part of the property, the notice to quit would serve as the first clear revocation of that permission. Counsel argued that in **Clarke v Swaby** (supra), the court made it clear that the clock for adverse possession does not start to run until the licence has been revoked. Therefore, even if the applicant could prove the other elements of adverse possession, which she cannot, the limitation period could only start from the date of the notice.

Analysis

[20] I therefore firstly considered whether the applicant's evidence disclosed that she has a real prospect of succeeding at trial for a permanent injunction on the basis that she had acquired an interest in the property by adverse possession.

[21] To establish adverse possession, the applicant's evidence must show that she has been in legal possession of the property. That is, she must show that she has exercised a sufficient degree of physical custody and control ("factual possession") and an intention to exercise such custody and control on her own behalf and for her own benefit ("intention to possess") for a period of at least 12 years.

[22] However, Morrison JA at paragraph 39 of **Recreational Holdings (Jamaica) Ltd v Lazarus and the Registrar of Titles** (supra) relied on what Slade LJ said in *Buckinghamshire County Council v Moran* [1989] 2 All ER 225, 232-233:

"Possession is never 'adverse'...if it is enjoyed under a lawful title. If, therefore, a person occupies or uses land by licence of the owner with the paper title and his licence has not been duly determined, he cannot be treated as having been in 'adverse possession' as against the owner of the paper title."

[23] And at paragraph 10 in **Ramnarace v Lutchman** (supra) where Lord Millet said:

"Generally speaking, adverse possession is possession which is inconsistent with and in denial of the title of the true owner. Possession is not normally adverse if it is enjoyed by a lawful title, or with the consent of the true owner."

[24] The applicant must therefore show that her possession of the property for the requisite period has been without the consent of the owner. The applicant's evidence is that she entered into occupation of the house on June 24, 1985 with the consent of her grandaunt Eliza Marsden with whom she shared a mother/daughter relationship. She has never paid rent or any sum of any kind to anyone for her occupation of the property or any part thereof. She occupied a clearly sectioned off half side of the house on the property which at the time had her grandaunt's belongings. She describes the house as two distinct apartments with the other section of the house being occupied by the 1st respondent. Her evidence is that this was the way the house on the property was always occupied. She stated that her grandaunt promised her that the section of the property she occupied would one day belong to her so she should treat the property as a whole like her own. After her grandaunt's death on September 24, 2001, she continued to occupy her section of the house and, continued in sole, undisturbed, undisputed, exclusive, intentional and continuous possession for upwards of 12 years. Her evidence is that she believed and operated on the basis that she was entitled to fifty percent interest in the property, if not all the property. Therefore, she exercised various acts of ownership of the property which since her grandaunt's death has cost her upwards of \$10 million.

[25] These acts of ownership she stated include effecting substantial and extensive repairs to the inside and outside of the property at her own expense, effecting improvements to the property by cornering off a section of the property by erecting a fence and gate around a part of the property barring access to half of the dwelling house and yard to which she has access; maintaining a garden on the property including planting and trimming plants whether on her own or by way of a paid gardener the expenses for which she solely covered; contracting with the Jamaica Public Service and Flow for electricity and internet/home tv services for her section of the property for which she is billed in her own name; continuing what her grandaunt did that is paying a portion of the water bill for the property and permitting family members and/or whomever she chose to enter and remain on the property undisturbed while she is away overseas on business.

[26] She stated that all the improvements repairs and other acts of ownership were completed with the full knowledge and acquiescence of the 1st respondent. She says that

on more than one occasion the 1st respondent upon observing repairs being done to her section of the house would say '*mi nu business wid over deh so*' and decline to assist or contribute on occasions when she informed him that she intended to make improvements or to effect repairs to parts of the property beyond her section.

[27] Her further evidence is that the 2nd respondent only recently commenced residing at the property and stays exclusively in the section occupied by the 1st respondent. The respondents, she stated, have never been in physical occupation of the part or section of the property over which she exercises exclusive, intentional and continuous possession. It was her further evidence that neighbours in or along Padmore Drive know her to be in possession of the property or part thereof for upwards of 12 years since her grandaunt's death in 2001.

[28] From the applicant's evidence she clearly entered into possession of the property with the permission of Ms. Marsden, her grandaunt, who at the time resided overseas and whose permission continued right up to her death. In **Ramnarace v Lutchman** Lord Millet at paragraph 17 stated

"... Before an occupier who is in exclusive occupation of land can be treated as holding under a licence and not a tenancy there must be something in the circumstances such as a family arrangement, an act of friendship or generosity or such like, to negative any intention to create legal relations."

[29] The issue that therefore arises, is whether the applicant continued to occupy the property as a licensee after her grandaunt's death. No affidavit was filed in response to the application for injunction, but as was stated earlier by the last hearing of the application an affidavit of the 1st defendant was filed in response to the Fixed Date Claim Form where he stated that Ms. Marsden was his aunt, a point that was stated openly to the court and not disputed by the applicant. There is therefore clearly a familial relationship that existed among the relevant parties.

[30] In **Nadine Wilson v Daisy Brown and others** [2024] JMSC Civ 04 at paragraph 30 Staple J (ag) (as he then was) found that even if it was the deceased joint tenant who

had put the 1st and 2nd defendants in the property, it was done jointly with the claimant and the acts of one joint tenant are deemed to be the acts of the other. To support his finding Staple J (ag) relied on **Leek and Moorlands Building Society v Clark** [1952] 2 All ER 492 at pg 496. Where it was stated

“If property or rights are held jointly, prima facie a transfer must be by or under the authority of all interested.”

[31] Therefore, based on that reasoning when applied to this case, Ms Marsden’s decision of putting the applicant in possession of the section she currently occupies is deemed as being jointly done with the 1st respondent, who actually lived at the premises during the time of her entry into occupation. The evidence further showed that the 1st respondent even after having acquired ownership of the entire property by *jus accrescendi* allowed the applicant to remain in occupation of the property which continued undetermined up to September 2025 when she was served with the first notice to quit.

[32] Even if the applicant’s actions could be considered acts of ownership, adverse to the owner, the issue would still arise as to whether a part of a house could be the subject of adverse possession, at all, and in particular, in the circumstances of this case, where the paper owner occupied the rest. The applicant’s evidence is that throughout the entire period of her occupation of a half side of the house, the other section of the house was occupied by the 1st respondent.

[33] The court notes, here as well, on this point the case of **Nadine Wilson v Daisy Brown and others** (*supra*) where there was a somewhat similar occupation of a part of the premises by the defendants of specific rooms of one house. The court found that the three defendants’ occupation could not properly ground a claim in adverse possession as each possessed parts of the same indivisible portion of the property, the house. The court in arriving at its decision examined the case of **Perry v Baugh** [2018] JMCA Civ 12 where Brooks JA found that several persons who had been in possession of separate portions of a parcel of land along with the owner had acquired possessory title to the land and acknowledged that acts of individual possession on a part of the land may or may not entitle one to assert possession over the whole depending on the particular facts.

However, Staple J (ag) in arriving at his decision distinguished **Perry v Baugh** (supra) from the case before him on the basis that the three defendants occupied the same indivisible portion of the property - the house, as opposed to the clearly physically separate portions of the same land as was the case in **Perry v Baugh**.

[34] The applicant supplied the court with the authority of **Rosalind Ramroop v John Ishmael and Lall Heerasingh** [2010] UKPC 14, an authority of the privy council emanating from Trinidad and Tobago, where the board noted in their written judgment when dismissing the appellant's appeal on adverse possession that though they were in favour of the decision of the court of appeal they could not agree with an aspect of the reason for the decision, that is, that a person could not claim adverse possession of a part of a building. As the board there stated that there is very little authority on the point but that once it could be established from the pleadings that part of the building could be clearly defined, it was possessed to the exclusion of all others, save for the possessor's licence and it was for the duration of the limitation period, then the acquisition of such a possessory title was possible. However, it should be noted that the case was not decided on that point as the court noted at paragraph 26 "*That the appellant's claim met none of these requirements and that her pleadings never put forward (at all, still less with precision) an alternative case based on possession of a part only of 22 Union Street.*)" Further, at paragraph 27 the board stated that "*...if what Hamel Smith JA aptly called her final attempt had been based on an amended pleading which put her reformulated case precisely, and her evidence had provided detailed and credible support to the amended pleading, her case based on multiple occupation, afterthought though it was, might have succeeded. But in fact, the case on multiple occupation was neither pleaded nor proved.*"

[35] I considered here that the applicant's and respondents' occupation of the property in this case is somewhat similar to the 1st and 2nd defendants' occupation on the one hand and the 3rd defendant's occupation on the other in the case of **Nadine Wilson** where they occupied different rooms in the house and where the 3rd defendant had his own electricity. However, I am not bound by that decision, as it is a decision of a court of concurrent jurisdiction and would be considered persuasive. So too is the board's pronouncement

on the issue in **Rosalind Ramroop v John Ishmael and Lall Heerasingh**, and therefore the legal position on this issue, cannot be said to be settled.

[36] However, that is not a matter, that needs to detain the court at this stage of the proceedings. Even if it were found that the applicant could acquire a possessory title to a part of the building, a separate section of the dwelling house as being asserted here, the applicant would still have to overcome the hurdle of her being in permissive occupation of the premises. Her evidence is that the deceased and the 1st respondent granted her a licence to occupy but there is no evidence of revocation prior to the notice to quit being served on her in 2025. Her occupation is therefore incompatible with holding of the property adverse to the owner.

[37] I also considered the fact that for a case for adverse possession of the whole of the building to be successful, the applicant must show that she had an intention to possess in one's own name and on one's own behalf to exclude the world at large including the paper owner. There is no evidence that the 1st respondent was not always residing at the property and had therefore given up possession of the property such that the applicant could successfully claim adverse possession of the whole of the property. At paragraph 41 of **J A Pye (Oxford) Ltd and others v Graham and another** [2002] UKHL 30 which was cited with approval in **Recreational Holdings (Jamaica) Ltd v Lazarus and the Registrar of Titles** [2014] JMCA Civ 34, Lord Browne-Wilkinson agreed with Slade J's explanation of factual possession at paragraphs 470-471 of **Powell v McFarlane** (1977) 38 P& CR 452. He stated "*an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time.*" As such even if the applicant carried out acts of ownership for the requisite period her acts could not sustain a claim for a possessory title of the whole property as she did not have sole and exclusive possession of the property.

[38] I further considered that the applicant's evidence is that she believed and operated on the basis that she was at least entitled to fifty percent interest in the property and that she completed all the improvements, repairs and other acts of ownership with the full

knowledge of the 1st respondent which shows that she did not have the requisite intention to possess the property in its entirety.

[39] I therefore find that the applicant's evidence for the reasons stated above does not show that there is a serious issue to be tried in relation to her claim for adverse possession whether to a whole or a part of the subject property. She has therefore not shown that she has a real prospect of succeeding at trial for a permanent injunction on the basis that she had acquired an interest in the property by adverse possession.

Serious issue to be tried - Proprietary estoppel

Applicant's submissions

[40] In relation to the applicant's alternative claim that the applicant is a licensee with a proprietary interest, counsel for the applicant argued that there is sufficient evidence to satisfy the three components recognized in the authority of **Caren Cranston v Tamazine Samuels and Gairy Toorie** [2019] JMCA Civ 42. He argued that the 1st respondent has not objected to the applicant's occupation of the property nor her acts of ownership and that the 1st respondent by his expressed words and conduct gave rise to an assurance in the applicant's mind that the entire property or portion thereof belonged to her. Counsel submitted that it was based on the assurances Ms. Marsden gave to the applicant which was continued by the 1st respondent that caused the applicant to treat the property as her own to her detriment by undertaking substantial repairs and improvements to the property in sum of millions of dollars to the knowledge of the 1st respondent.

Respondent's submissions

[41] In contrast, counsel for the respondents submitted that a claim for proprietary estoppel, requires a clear and unequivocal assurance by the owner of the property, reliance by the applicant on that assurance and detriment suffered as a result of that reliance see **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley and others and RBT Bank Jamaica Limited v Estate Rudolph Daley and others** [2010] JMCA Civ 46. The applicants' evidence counsel argued shows no

clear evidence that the respondents promised that she would gain ownership of the property. At most her evidence indicates that she believed she might eventually inherit or benefit from the property due to family arrangements with Ms. Marsden. Neither has the applicant identified any conduct by the respondents, which could reasonably be seen as encouraging her to believe she would acquire a proprietary interest in the property. Counsel further argued that the applicant's actions of carrying out repairs or improvements alone cannot establish proprietary estoppel without a clear representation creating a proprietary expectation. Her claim therefore failed to establish the factual basis required to support a claim in proprietary estoppel.

Analysis

[42] The court in looking at the parties' arguments on this issue looked briefly at the law on licence and proprietary estoppel.

[43] A licence can be defined as a personal, non-exclusive permission granted by a landowner to another person to occupy or use the land and this would generally offer no permanent interest in the land and is revocable. However, where the landowner allows the person to develop or make substantial improvements to the land without asserting any dissent, then seeks after that to determine the licence, a court may find that it is inequitable to allow the landowner to recover the land with the developments effected by the licensee on it, without more.

[44] However, for this doctrine to operate, certain things must exist, that is, there must be

(i) an assurance or promise made by the property owner that the licensee would acquire an interest in the property, and if no such express promise exists, then an encouragement or assurance or conduct on the part of the landowner which makes the licensee believe, that he has or will have some interest in the land;

(ii) reasonable reliance by the licensee on the promise, encouragement or assurance and

(iii) detriment suffered by the licensee, by for example by the expenditure of substantial monies, time, labour etc. invested in the property.

[45] For this equitable principle to operate, strong evidence has to exist, to convince the court of this equitable interest created for the benefit of the licensee, as it was stated by the author Sampson Owusu in Commonwealth Caribbean Land Law page 186, when treating with the doctrine of proprietary estoppel or acquiescence, that

“This doctrine is another manifestation of the maxim, equity acts in personam. It is based on fraud. For (the author here citing Fry J in Willmott v Barber) it requires a very strong evidence to induce the Court of equity to deprive a man of his legal right. ...It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man must not be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights.”

[46] Having looked at the law in general terms, I now look at whether the evidence thus far adduced by the applicant is such that it can be said that there is a serious issue to be tried in relation to this aspect of the claim.

[47] The applicant's evidence is that Ms Marsden prior to her death promised her that a section of the property that she occupied would one day belong to her and that she should treat the property like her own. The applicant said she believed and operated on the basis that she was at least entitled to 50% interest in the property, if not all of the property, therefore she exercised various acts of ownership which, since her grandaunt's death, has cost her over ten million dollars (\$10,000,000). Her further evidence is that the repairs and acts of ownership were done with the full knowledge and acquiescence of the 1st respondent. Her evidence is also that the 1st respondent has on more than one occasion upon observing the repairs being done say *“mi nuh business wud [sic] over deh*

suh” and would decline to assist or contribute on occasions when she informed him that he intended to make improvements or to effect repairs to parts of the property beyond her section.

[48] As it pertains to the promise made by Ms Marsden to the applicant, I find the applicant’s evidence on this aspect to be vague, in that it is unclear when this promise was made to her and whether these later acts of ownership referred to her in her evidence were carried out in furtherance of the alleged promise. Her evidence, is that she carried out these acts of ownership and expenditure after Ms Marsden’s death, although the promise was clearly made sometime before, while Ms Marsden was alive. There is also no independent supportive evidence of this promise like a correspondence from the deceased or affidavit by another person who may have been present at the time the promise was made. I further consider that even if Ms Marsden promised the applicant that she would one day own the property, there is nothing in the applicant’s affidavit to show that the 1st respondent knew of this promise and encouraged her to repair and improve the property based on that promise.

[49] However, the court is also aware of the fact that the 1st respondent could be taken to have acquiesced in the applicant’s actions of ownership even if no express promise was made by him. As such, a court could still find that the doctrine of proprietary estoppel is made out, if the 1st respondent’s acquiescence to the acts of the applicant, would have encouraged her to act to her detriment. The court must therefore look at the applicant’s evidence as it pertains to these acts of ownership which were done after Ms Marsden’s death.

[50] The issue for the court is therefore whether the acts by the applicant were substantial acts, such that it could likely be determined by a court that the applicant has gained an equitable interest in the property. The court notes here that the evidence of the applicant as to the precise nature of these substantial improvements is quite vague, as the improvements and repairs that were done by her or at her sole expense were not specifically stated. Further, that although, she claims to have spent a substantial figure of approximately \$10 million on these repairs and improvements, no receipts of her

expenditure has been provided. This is particularly noted in the context of the evidence of the applicant in her affidavit in support of her claim filed in December 2025 on this point, where she stated, that she has located receipts amounting to some \$8 million and that a further affidavit would be provided evidencing same. However, the matter is now at the first hearing some 6 months after the claim was originally filed; and the defendant has already filed a response to the claim but no receipt has been forthcoming,

[51] It should be noted as well that the applicant is required to put before the court at the hearing of the application for the interim remedy sufficient evidence to satisfy the court that she has a real prospect of succeeding in her claim for a permanent injunction. That is, all the material evidence relevant to the court's determination of granting or refusing the injunction should be placed in the affidavit in support of the notice of application for the injunction. See paragraph 39 **Reliance Group of Companies Ltd v Ken's Sales and Marketing Ltd v Chirstopher Graham** [[2001] JMCA Civ 12.

[52] This court therefore finds that based on the evidence presently before it, it cannot be said that the acts of detriment referred to, are such, that a court at the trial of the claim would likely find that they are sufficient to establish an equitable interest in the property by the applicant. This is particularly so given that the length of occupation post Ms Marsden's death would have been for over some 20 years during which time one would expect reasonable expenditure by the occupant for repairs and improvements to the property for the purposes of basic comfort and habitation.

[53] In fact, the authority of **Cranston v Samuels and another** (supra), cited by the applicant, shows the type of substantial detrimental reliance, that a court is looking for when one is seeking to claim an equitable interest by estoppel. In that case, the court stated at paragraph 110 -112 of the judgment when referring to the evidence that the trial judge had before it for consideration that:

[110] The judge also had before her the fact that the original house left by the 1st respondent's father was a dilapidated old house made of board and some form of concrete mixture, not concrete blocks. The evidence of the 1st respondent was that the front house was also old and dilapidated, so much so, that

she did no renovation to it, but instead built an entirely new house. The disputed house was clearly repaired and renovated over time by Victoria and the appellant to, as the evidence in the valuation before the judge showed, one which was now a structure of concrete block walls, galvanized metal sheet roof, painted plywood ceilings, wooden and glass louvre windows, ceramic floor tiles, and raised panel doors. It is fully grilled with an enclosed porch. There are two bedrooms, a dining room, and a kitchen, with a stainless steel sink and cupboards. There is a bathroom with basin, toilet and shower, and the house is in good condition.

[111] It was clear, therefore, that considerable expenditure had been made to the house, none of which was done by the respondents. It was incumbent on the judge, faced with a claim for proprietary estoppel, to embark on an enquiry of the conditions under which, and the reason for which the house was built, and the part played by the respondents in the building of this structure. The house without the land was valued at \$3,000,000.00 with a replacement value at the time of \$4,700,000.00.

[112] When the 1st respondent's admittedly hands off approach to the house is juxtaposed against the appellant's belief as to the ownership of the house and the fact that it was being treated as the appellant's family home; and, when account is taken of the acquiescence and active participation of the 1st respondent by her conduct in fostering that belief, it is difficult to see how a court could find that the equity was not successfully raised. In those circumstances equity could not do otherwise than find that the 1st respondent's conscience was so engaged that it would be unjust and unconscionable to allow her to now assert her legal rights over the house and to claim that no equity arose in the appellant, or indeed, in her mother. The 2nd respondent, not being a bona fide purchaser for value, is in no better position than the 1st respondent.

[54] This court addresses briefly the portion of the applicant's claim in the alternative, that the joint tenancy by which Ms. Marsden and the 1st respondent held the property, was severed by agreement and/or the conduct by Ms. Marsden and the 1st respondent during Ms. Marsden's lifetime, such that, at the date of her death on September 4, 2001, the property was held in equal shares as tenants in common and that the transfer of the

gift of the property registered on May 19 , 2025 from the 1st respondent to himself and the 2nd respondent, is void and of no legal effect.

[55] The court notes that although evidence in support of this was filed in the substantive claim it was not adduced in support of the application for interim injunction. However, on this point, it is this court's view that even if at trial there is a finding that the joint tenancy was in fact severed prior to Ms Marsden's death, Ms Marsden's interest would have passed on her death to her estate and not to the applicant. Therefore, I agree with the respondents' counsel that the proper party to argue such a claim before the court is the estate of Ms. Marsden not the applicant. Further, if as it seems to be the case, that it is being argued that based on the promise of Ms. Marsden to the applicant her portion of the property is being held in equity by the estate of Ms. Marsden for the benefit of the applicant, based on the principle of proprietary estoppel then the estate of Ms Marsden would have to be added as defendant or at the very least an interested party to the claim and the claim would have to be properly pleaded as such.

[56] In light of all of the above circumstances the court finds that there is also no serious issue to be tried in relation to the applicant's claim for an equitable interest based on the doctrine of proprietary estoppel.

Whether damages would be an adequate remedy and where does the balance of convenience lie?

[57] Since, the court has determined that there is no serious issue to be tried, it need not as the authorities have stated go on to deal with the other considerations as stated in **American Cynamid** for the granting of an interim injunction. However, this court would wish to note briefly that though the subject matter of the claim relates to real property and that the general principle is that where the subject matter of the dispute is real property and there is a presumption that damages are not an adequate remedy see **Kevin Sudeall and Joyce Ramdeen-Sudeall v Garfield Sinclair and Lynsetta Sinclair** [2023] JMCA Civ 32), such a presumption is rebuttable see **Vinayaka Management Limited v Genesis Distribution Network Limited and others** (2024 JMCA Civ 11). Therefore,

even if it were found at trial that some sums were expended by the applicant on the premises and that the applicant should be compensated for same, an award of damages could provide effective relief. As such, in those circumstances damages would be an adequate remedy. A point clearly recognized by the applicant in her claim as seen by her request for an alternative order for the court to have the defendants (erroneously stated as claimants) compensate her at fair market value for her equitable interest in the property and/or the dwelling house.

[58] Both parties also addressed the court on the fact that the applicant had not given an undertaking as to damages, with a view to satisfying the court that if the injunction is granted and in the final analysis, they are unsuccessful in the claim, they are willing and able to compensate the respondents for any losses that they may suffer because of the injunctive relief. The applicant, it is noted in her evidence, has merely stated that she is prepared to give an undertaking as to damages if required to do so but has not given any such undertaking nor provided any evidence of her capacity to honour such an undertaking.

[59] The court notes that such an undertaking as to damages ought to have been given and evidence of the means of the applicant to satisfy such an undertaking as seen in the authorities of **Jamaican Pelican Resorts Ltd v Seanic Investments (Cayman) Ltd anor** [2016] JMSC Civ 205, and **TPL Limited v Thermo Plastics**, [2014] JMCA Civ 50 cited by the respondents. In particular this court notes the dictum of Mangatal JA (ag) (as she then was) in **TPL Limited** where she stated that the applicant was required to give both an undertaking in damages as well as its financial ability to satisfy such an undertaking and that where there was a failure to do so, it rendered *it impossible to carry out the balancing exercise required by the court as referred to in American Cyanamid* and in **NCB v Olint** to arrive at a proper assessment of which course is likely to cause the least irremediable prejudice.

Balance of Convenience

Applicant's submissions

[60] In relation to the question of where the balance of convenience lies, it was Mr. Lawson's submission that it is in the interest of justice that the status quo is preserved until the court has adjudicated on the issues between the parties and noted that there is no evidence filed by the respondents from which the court can glean any prejudice to them if the status quo is preserved until the determination of the claim at trial. By comparison, the applicant has detailed the nature of the prejudice she could suffer at the hands of the defendant should the application be refused.

Respondents' submissions

[61] The respondents on the other hand submitted that the balance favours the respondents. The respondents, she argued are registered owners asserting lawful rights to possess and control their property. In contrast, the applicant's claim is based on permissive occupation, unsubstantiated assertions of family promises and a legally untenable claim for adverse possession. For that reason, to restrain the registered proprietors from dealing with their property in those circumstances would constitute a serious and unjustified interference with proprietary rights.

Analysis

[62] The court must state that it found favour with respondents' submissions on this point, particularly in light of the fact that from the commencement of the claim on December 8, 2025 up until the date of the last hearing in June, that is approximately 6 months, it was confirmed that the applicant had been residing overseas. Therefore, the refusal of the injunction would not necessitate her physically removing from the property as only her belongings seem to be present there.

Disposition

[63] The court therefore orders as follows that:

- i. The orders as sought in paragraphs 1 and 2 of the claimant's Notice of Application for Court Orders filed December 8, 2025, are refused.
- ii. Costs of this application is awarded to the 1st and 2nd defendants/ 1st and 2nd respondents to be taxed if not sooner agreed.
- iii. The first hearing of the Fixed Date Claim Form filed on December 8, 2025 is adjourned to February 15, 2027 at 10:30 am for 1 hour.
- iv. The claimant is permitted to file and serve any further affidavits in support of the claim by September 30, 2026.
- v. The defendants are permitted to file any affidavit in response by October 30, 2026.
- vi. No further affidavits are to be filed by the parties after December 31, 2026 without the leave of the court.
- vii. By consent the parties are to proceed to mediation by December 31, 2026.
- viii. The claimant's attorney-at-law is to file and serve the formal order.