



[2024] JMSC Civ 153

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2012HCV06540

BETWEEN

WINSTON SMITH

CLAIMANT

AND

VERNON MCGOWAN

**1st DEFENDANT/
ANCILLARY
CLAIMANT**

AND

MARVA MIRANDA

(Administratrix for the Estate of Monica Gordon)

**2nd DEFENDANT/
ANCILLARY
DEFENDANT**

CONSOLIDATED WITH:

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2013HCV00461

BETWEEN

KINKAR BASU

CLAIMANT

AND

VERNON MCGOWAN

1st DEFENDANT

MARVA MIRANDA

AND

(Administratrix for the Estate of Monica Gordon)

2nd DEFENDANT

IN OPEN COURT

Ms. Petrina Williams instructed by Zavia Mayne & Co. for the Claimant Mr. Winston Smith

Ms. Georgia Hamilton instructed by Georgia Hamilton & Co for the 1st Defendant/ Ancillary Claimant Mr. Vernon McGowan

Ms. Carlene McFarlane and Ms. Rachelle McNeil Instructed by McNeil & McFarlane for the 2nd Defendant/Ancillary Defendant Ms. Marva Miranda

Ms. Venice Brown instructed by Cecil Mitchell & Co. for the Claimant Mr. Kinkar Basu

Heard: June 3, 2019, November 25,26,27,28 and 29, 2019, December 2,3,4 and 11 2019 and delivered on October 10, 2024

Succession Law – Adverse possession – Lease Agreement – Property part of estate sold before any representative for the Estate appointed – Doctrine of “Relation Back” – Effect on Conveyance – Whether sale of the property was ratified by the Administratrix – Whether the purported sale benefited the Estate – Agency – Whether tenant who remained on property occupied as agent for the estate or adverse possessor – Damages sought for loss occasioned by alleged intimidatory actions said to cause a party to have lost customers and business

PALMER, J

Background to consolidated claims

Winston Smiths Claim (2012HCV06540)

[1] The dispute involves competing claims over property at 77½ Slipe Road, Kingston for which Winston Smith asserts ownership by adverse possession, while Mr. McGowan claims his title based on a deed of conveyance executed by Ms. Miranda, a beneficiary of Monica Gordon’s estate. Two claims are consolidated: the first brought by Mr. Smith against Mr. McGowan in which Ms. Miranda was later joined as Administratrix for the estate of Monica Gordon. Mr. McGowan filed ancillary claims in that claim. The second

claim was brought by Kinkar Basu, a tenant of Mr. Smith, against Mr. McGowan and Ms. Miranda.

[2] 2012HCV06540 ('the 2012 claim') was filed by Mr. Smith and initially commenced by way of Fixed Date Claim Form filed in November 2012. By orders made on May 7, 2013, the claim was treated as commenced by ordinary Claim Form and the following are the orders sought:

- a) *Recovery of Possession of all that parcel of land part of Number Seventy- Nine Slipe Road (now known as 77 ½ Slipe Road) in the parish of Saint Andrew containing by survey One Rood Fourteen Perches and Two-Tenths of a perch of the shape and dimensions and butting as appears by the plan thereof thereunto annexed and being the land registered at Volume 535 Folio 4 of the Register Book of Titles.*
- b) *An injunction restraining the Defendant whether by himself or his servants and/or agents from entering upon, trespassing upon or in any way whatsoever disturbing the Claimant's quiet possession of all that parcel of land part of Number Seventy-Nine Slipe Road.*
- c) *A Declaration that the Claimant, Winston Smith is the owner by way of adverse possession and is entitled to possession pursuant to section 85 of the Registration of Titles Act of all that parcel of land part of Number Seventy-Nine Slipe Road.*
- d) *The sum of \$900,000.00 for outstanding rent for the period October 2011 to March 2013 and at a continuing rate of \$50,000.00 per month;*
- e) *Cost;*
- f) *...*

[3] By orders made on October 31, 2013, the estate of Monica Gordon was joined as a party to the 2012 claim through its Administratrix, Marva Miranda. Winston Smith claims to be entitled to be registered as the proprietor by way of adverse possession of the land part of 79 Slipe Road (now known as 77 ½ Slipe Road) and registered at Volume 535 Folio 4 of the Register Book of Titles ("the property"). According to his particulars of claim, in or about 1977 he was placed in possession of the property by the registered proprietors Keith Gordon and his wife, Monica Gordon, and has enjoyed undisturbed and unmolested possession since then. In 1983 he incorporated and operated Gordon & Smith Fine Furnishing and Appliance Limited at the said property with Keith Gordon.

[4] Keith Gordon died in or about 1986 and his wife Monica died not long afterwards (in or about 1988). After their deaths, Mr. Smith claims he continued in open and

undisturbed possession, exercising all acts of ownership to include paying the yearly taxes and, from time to time, painting the building. The property was destroyed by fire in 1999, and between 2000 and 2001 he renovated the building at his own expense.

[5] He began to lease the property in 2002 and during that time has had several tenants occupying it for varying durations. The property was leased to Mr. McGowan in or about 2006 for a monthly rental of Forty Thousand Dollars (\$40,000.00), which was increased to Fifty Thousand Dollars (\$50,000.00) on February 1, 2010. Mr. McGowan failed or refused to pay the rental after October 2011, and remained in occupation despite service of a notice to quit in January 2012. At the time of filing the claim he stated that Mr. McGowan owed Nine Hundred Thousand Dollars (\$900,000.00). In November 2011, Mr. Smith applied to the Registrar of Titles to be registered as the proprietor of the property pursuant to Section 85 of the Registration of Titles Act by virtue of his adverse possession.

[6] Mr. McGowan in his defence to the 2012 claim asserts that Mr. Smith held himself out as an agent for the property and any dealings with the property were based on this assertion. It is not disputed that the subject property was jointly registered in the names of Keith Gordon and Monica Gordon, and by survivorship, title passed to Mrs. Gordon upon the death of her husband. According to him, he purchased the property from Ms. Miranda as a person he accepted as the personal representative for the estate of Mrs. Gordon and denies in his ancillary claim against Ms. Miranda (filed on November 6, 2015), that he owes rent to Mr. Smith. Accordingly, in his ancillary claim, Mr. McGowan sought the following orders:

- a. *Pursuant to the deed of conveyance executed by [Ms. Miranda] in his favour on June 30, 2021 and on the principle of relation back, a declaration that the ancillary claimant is legally and beneficially entitled to property registered at Vol. 535 Folio 4...*
- b. *A declaration that the property conveyed under said deed of conveyance is comprised in ... Vol. 535 Folio 4...*
- c. *An order for rectification of the said deed of conveyance and such other documents executed by the Ancillary Claimant and Ancillary Defendant to give effect to the sale of the said property.*
- d. *An order for the registered title of the said property ... to be issued in the name of the Ancillary Claimant and/or his nominees.*

- e. *An order that if the Ancillary Defendant shall within 14 days of the date hereof fail to execute any instrument or other document for the purposes of giving effect to the terms of the Order herein, then the Registrar of the Supreme Court shall be empowered to sign on her behalf.*
- f. *An order for the Ancillary Defendant to produce the duplicate Certificate of Title registered at Volume 535 Folio 4... within 14 days of the date hereof or alternatively that there be an order dispensing with the said ... title to effect the transfer to the Ancillary Claimant herein.*
- g. *Alternatively, an order for recovery of the purchase price of \$7,500,000 and/ or damages for unjust enrichment.*
- h. *An order for interest at 1% above the weighted average on commercial loan rates for the period 30 June 2011 to the date of judgment on such amounts as are found due to the 1st Defendant from the 2nd Defendant or at such rate and for such period as this Court deems fit.*
- i. *Costs..*
- j. *Liberty to apply.*

[7] Mr. McGowan caused a caveat to be lodged against the title to the property, the use of which he says he has been denied the use of, as collateral, to improve his business. Since November 2011, Mr. Smith has been collecting rent from Mr. Basu for the property and has thereby encouraged and/ or permitted Mr. Basu to remain there in furtherance of his wrongful claim of acquisition by adverse possession. He also states that Mr. Smith has been unjustly enriched at his expense and has had the use and value of the said rents. By his defence and counterclaim to the 2012 Claim, filed on November 6, 2015, Mr. McGowan has sought the following orders:

- a. *A declaration that, as at June 2011, the Claimant became entitled to the legal and beneficial ownership in the said property;*
- b. *An injunction restraining the Claimant whether by himself, his servants and agents or otherwise from collecting rent, entering, using or otherwise dealing with the said property whatsoever;*
- c. *Damages for trespass and/or alternatively unjust enrichment;*
- d. *An account of all sums due from the Claimant to the 1st Defendant in respect of rents collected by the Claimant from all occupants of the property from June 2011 to the date of judgment or such other period as this Honourable Court thinks just;*
- e. *An order for interest at 1% above the weighted average on commercial loan rates for the period 30 June 2011 to the date of judgment on such amounts as are found due to the 1st Defendant from the Claimants at such rate and for such other period as this Honourable Court deems fit;*

- f. *The Registrar of Titles be directed to remove caveat no. 1863197 lodged against the title for the property;*
- g. *Costs to the Claimant to be agreed or taxed; and*
- h. *Liberty to apply.*

Kinkar Basu's Claim (2013HCV00461)

[8] Mr. Basu, a businessman and tenant of 77 Slipe Road, filed a claim against Mr. McGowan for unlawful possession of his premises. He claims that in 2008, he entered into a lease agreement with Winston Smith, whom he knew to be the owner and/or person in lawful possession of property. Mr. Basu began occupying the premises in mid-2008 and claims that Mr. McGowan also became a tenant around the same time.

[9] In September 2011, Mr. McGowan served Mr. Basu with a notice to quit, demanding proof of his authority to serve him with the notice. In response, Mr. McGowan produced a document titled "Conveyance," purporting to convey the property to him and entitling him to possession. Mr. Basu refused to accept its authenticity and continued to acknowledge Mr. Smith as his landlord and to pay rent to him.

[10] Mr. Basu alleges that the harassment and intimidation of Mr. McGowan resulted in huge economic loss to his business and put him, his staff, and customers in fear for their safety. He alleges that Mr. McGowan has regularly gone into his store accompanied by armed men, demanding that they leave the premises, often causing his customers to leave, with most never returning. His once successful business, which benefited from foot traffic from persons visiting the nearby Courts furniture store, has therefore been adversely affected.

[11] Mr. Basu claims that before Mr. McGowan served him the notice and his refusal to give up possession, he did not experience any violence, harassment, or intimidation from any person during the conduct of his business. The constant disruptions to his business from Mr. McGowan's intrusions have resulted in a reduction of daily sales to between Seventy Thousand Dollars (\$70,000.00) and Eighty Thousand Dollars (\$80,000.00), creating an unsafe environment for him, his staff, and customers, and resulting in

estimated losses in excess of Twenty Million Dollars (\$20,000,000.00) up to the time of filing his claim.

[12] Mr. Basu states that Mr. McGowan has not produced credible documentary evidence that he is the lawful owner of the premises, and no competent court has ordered him to give up possession. He further states that the purported conveyance of premises to him is signed by Ms. Miranda, one of the beneficiaries of the estates of Keith and Monica Gordon, who was not in possession of a Grant of Probate or Letters of Administrator at the time of the conveyance. In his claim he sought the following:

- a. *A Declaration that the Claimant Mr. Basu is a legal occupier of all those premises more commonly known as 77 ½ Slipe Road Kingston 5 in the parish of Saint Andrew being lands comprised in Certificate of Title registered at Volume 535 Folio 4 of the Register Book of Titles.*
- b. *Damages for trespass.*
- c. *The sum of \$20,000,000.00 for loss of income.*
- d. *Costs and Attorney's costs.*
- e. *That there be any such and further relief as this Honourable Court deems fit*

[13] Mr. McGowan, in his defence and counterclaim to the 2013 Claim, argues that Mr. Basu was a tenant of the Slipe Road property until November 25, 2011, when his tenancy was determined by notice to quit. He admitted that Mr. Basu began occupying a section of the property in or about 2010, prior to June 2011, when Mr. Smith held himself out as the agent of the property. Since June 2011, Mr. McGowan claims to have become the beneficial owner and legally entitled to property, which were registered in the names of Monica Gordon and Keith Gordon.

[14] Mr. McGowan argues that he purchased the entire interest in the property from Ms. Miranda, who has since become the Administratrix of the Estate of Monica Gordon. He denies harassing Mr. Basu and makes a counter-allegation of harassment against Mr. Basu, which he claims began after he served Mr. Basu with notice to quit. He admits to entering Mr. Basu's store in January 2013, accompanied by friends and fire personnel, but claims it was necessary to extinguish a fire on the premises and prevent further

damage to the property. He denies any intention to intimidate or harass anyone and insists that his actions were done to protect the property, which he regards as his.

[15] Mr. McGowan asserts that Mr. Basu has been a trespasser since November 26, 2011, causing him loss and damage, and that he deliberately and contemptuously remained on the land to make a profit, entitling him (Mr. McGowan) to exemplary damages. Accordingly, he has counter-claimed against Mr. Basu:

- i. A declaration that, as at June 2011, the Claimant became entitled to the legal and beneficial ownership in the said property;*
- ii. An order for recovery of possession;*
- iii. An injunction restraining the Claimant whether by himself his servants and agents or otherwise from entering, using or otherwise dealing with the said property whatsoever;*
- iv. Damages and exemplary damages for trespass and/ or alternatively mesne profits from 26 November 2011 to the date of judgment or at such rate and for such other period as this Honourable Court deems just;*
- v. An order for interest at 1% above the weighted average on commercial loan rates for the period 26 November 2011 to the date of judgment on such amounts as are found due to the 1st Defendant from the Claimant or at such rate and for such other period as this Honourable Court deems fit;*
- vi. Costs to the Claimant to be agreed or taxed; and*
- vii. Liberty to apply.*

[16] Marva Miranda denies that Mr. McGowan is beneficially entitled to the property and that the sale was aborted due to her lack of authority or capacity to sell it. She denies that Mr. McGowan is entitled to the orders sought or that the doctrine of 'relation back' is applicable on the facts of this case.

[17] Ms. Miranda recounts an attempted sale of the property to Mr. McGowan in June 2011, prior to her application for Letters of Administration. She contended that Counsel who acted for her was already acting for Mr. McGowan, and did not sufficiently explain to her that she lacked capacity to sell the property, particularly as there was no written authority from the other beneficiaries to do so. The application for Letters of Administration was made in 2012 and granted on October 17, 2013.

[18] Ms. Miranda admits to receipt of money several months after executing the "Conveyance", but denies receiving Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) from Mr. McGowan. Whatever sums he paid were given to Mr. McGowan's Attorneys-at-Law. He claims be entitled to a refund of the sums less any amount due for his use and occupation of the property.

[19] Ms. Miranda's counterclaim seeks payment for use and occupation of the premises from October 2011 to present, and/or interest in such terms and rates as the Court deems just. In his reply, Mr. McGowan states that Ms. Miranda obtained a Grant of Letters of Administration for the purposes of ratifying and affirming the conveyance to him and since obtaining it, sought to do so. He takes issue with the applicability of the principle of relation back to the instant proceedings and insists that the conveyance having been effected before the said grant, Ms. Miranda has since ratified and affirmed the said conveyance. Regarding the claim that property was valued in excess of Twenty Million Dollars (\$20,000,000.00) in 2011, Mr. McGowan's position is that the correct principle of law is that consideration need not be adequate but must be sufficient, and he has provided sufficient consideration.

The Trial

Winston Smith

[20] Winston Smith, a businessman from Lot 686, 2 North Greater Portmore, St. Catherine, claimed that he was placed in possession of the Slipe Road property by Keith Gordon and his wife Monica Gordon in 1977. He operated Winston Enterprise Fine Furniture and Appliances Limited as a sole proprietor, during which he enjoyed undisturbed occupation. In 1983, he began operating with Keith Gordon at the property under the name "Gordon & Smith Fine Furnishing and Appliance Limited". Keith Gordon died in 1986, and Monica Gordon died in 1988, after which he claims to have continued in open and undisturbed possession of the property.

[21] Mr. Smith claimed to have lost over One Hundred Million Dollars (\$100,000,000.00) in business assets from the fire damage and changed the name of the

business to "Superb Furnishing". In 2002, he entered into lease agreements with several persons to occupy sections of the property. In 2006, he entered into a lease agreement with Mr. McGowan for a monthly rental of Forty Thousand Dollars (\$40,000.00) which increased to Fifty Thousand Dollars (\$50,000.00) in February 2010.

[22] Mr. Smith served a notice to quit on Mr. McGowan in January 2012, who refused to vacate and deliver up the premises. In November 2011, his Attorneys-at-Law made an application for him to be registered as the proprietor of the property by way of adverse possession, and for Mr. McGowan to refrain from entering or trespassing upon or in any way whatsoever disturbing his quiet possession of the property.

[23] Mr. Smith alleges that since 2015 or 2016, Mr. McGowan has created havoc at the property, harassing him and his tenants through threats and acts of violence. He alleges that Mr. McGowan and/or his servants and/or agents have moved out his work machines, tools, and equipment from the property, severely disrupting his business operations and halting his ability to earn from the business. He also alleged that Mr. McGowan destroyed a major section of the property and wishes for Mr. McGowan to stop interfering with him, his tenants, and the property.

[24] Mr. Smith denied that the fire at the premises was due to his negligence but recounted that it was caused by a machine to the back of the workshop. He denied that he was the recipient of the proceeds of an insurance policy after the fire but, at his expense, had the place cleaned up by his workers using his own savings to conduct the repairs and renovation. He rejected the assertion of Mr. McGowan that he conducted repairs to the section that he occupied after the fire as, according to him, there was no need for repairs in the section Mr. McGowan occupied.

[25] In cross-examination, on behalf of Mr. McGowan, Mr. Smith indicated that he had known Keith Gordon since he was a child and was a senior member of the Coptic Church. He viewed Mr. Gordon as a father, brother, and friend, having grown with him in Barbican. He claimed that Mr. Gordon, affectionately referred to as "Nya," wanted him to have the Slipe Road property. He contends that he is the owner of the Slipe Road property based

on the fact that he was allowed to operate the premises there even after Keith Gordon's death.

[26] Mr. Smith maintained that he had tenants at the subject property but no longer does anything at the property except to watch Mr. McGowan's activities. He has been renting the premises since 2002 and was no longer in touch with any of his former tenants other than Mr. Basu. Mr. Smith also mentioned that he noticed some of the Gordons' children started to come around there, especially after they began to 'run around with' Mr. McGowan. According to him, they did not do so during the life of their parents.

[27] Mr. Smith recounted that when the shop was in operation, it was open Mondays to Saturdays from about 8:30 am. He could recall one of his workers, Ronald Phipps, who worked there as an apprentice until the fire. Mr. Smith claimed that Mr. Phipps only stopped working for him because of the interference by Mr. McGowan from about 2014.

[28] Mr. Smith denied showing Mr. McGowan the entire premises to be rented, and did not offer to rent it to him for One Hundred and Fifty Thousand Dollars (\$150,000.00). He denied that the owners could not afford to fix the premises up and that when he did so, he was acting as their agent. He denied that Mr. McGowan had to spend a month cleaning up the premises before he could move in, contending with debris and controlling pests.

[29] Mr. Smith denied that there was no legal source of electricity supplied to the premises when he rented it to Mr. McGowan, and that it was Mr. McGowan who wired the premises for electricity. He denied that Mr. McGowan had additional cleaning up to be done when he rented the premises to him and that he paved a section to the rear of the premises other than where he placed the containers. He was aware of two containers being there but not that Mr. McGowan had built three structures at the back of the premises to include a bathroom with two stalls, a workshop, and guard room.

[30] Mr. Smith claimed that the fire occurred in 1999 and not 1998, and that when he arrived to see the premises damaged, he cleaned up, repaired the roof, and washed down

the walls for painting. He denied that upstairs the premises were extensively damaged but insisted that he did extensive renovation to it.

[31] On cross-examination on behalf of Ms. Miranda, Mr. Smith maintained that he was still in possession of the property since 1977 from Keith Gordon. He admitted that he had previously said that Monica and Keith Gordon put him into possession, but that he said that because Monica as well as Keith Gordon's names were noted on the title. He maintained that he had never applied for adverse possession of the property prior to retaining Counsel and denied that his application related to only half of the property.

[32] In 2007, Ms. Miranda and Sharon Gordon began to come to the premises along with Mr. McGowan. Mr. Smith met Mr. McGowan in 2006 and received a notice from someone on his behalf three years later. He recounted that he visited Mr. McGowan's office after receiving the notice and was informed by him that after seeing the property advertised, he contacted Ms. Miranda who sold it to him. Mr. Smith claimed that he in turn spoke to Ms. Miranda and asked her why she had sold his place without speaking to him.

[33] Mr. Smith also mentioned that he knew Monica Gordon but had never seen her come to the property, as Keith Gordon had given him the property outright. He insisted that Keith Gordon gave him the property, and Monica Gordon never came there, despite the indication in his witness statement where he stated that both Keith and Monica Gordon gave him the property.

[34] Mr. Smith stated that he had Mr. McGowan in court after he kept challenging him for possession of the property but could not recall filing a claim against Ms. Miranda for recovery of possession of the property. He reiterated that he was aware the registered owners of the property were Monica and Keith Gordon but that he was given the property by Keith. He denied having an altercation with Monica Gordon after the death of Keith Gordon in which she told him to leave the property.

[35] Mr. Smith maintained that he never filed any claim against Ms. Miranda until Mr. McGowan included her in their dispute. He denied filing a claim against her on November 27, 2012, as they had no issues. He maintained that he never rented the property after

the death of Keith Gordon as agent for his wife, Monica, but continued to rent it after her death. He maintained that he collected rent based on the foundation he had with Keith, and which remained unchallenged by Monica even up to her death.

In cross-examination on behalf of Mr. Basu, Mr. Smith agreed that Mr. Basu had informed him of the harassment by Mr. McGowan and also had decided to take him to court. He said he was informed that Mr. McGowan responded poorly to him taking him to court and would take men to Mr. Basu's business place to harass him. He has had to accompany Mr. Basu to the police station to complain about some of this harassment. Mr. Smith claimed that he was the one that would effect repairs to the part of the premises rented to Mr. Basu where necessary and that he complained to him on more than ten occasions about Mr. McGowan's harassment.

Ronald Phipps

[36] In 1985, Mr. Phipps met Mr. Smith, the owner and operator of the furniture shop under the name "Gordon & Smith Fine Furnishing and Appliance Limited." He joined as an apprentice where he learned how to sand furniture and was assigned to assist other workmen in cleaning up the shop. As his abilities improved, his interest in spraying furniture led him to learn the skill and later be employed as a spray man in his mid-twenties.

[37] When fire destroyed the property, Mr. Smith renovated the property to continue business operations. He erected a small workshop to the back of the property, got a few machines, and continued working with Mr. Smith. After the renovation was complete, Mr. Smith began renting sections of the property to different tenants, including Mr. Basu and Mr. McGowan. Mr. Phipps claimed that Mr. Smith's occupation of the property was open, undisturbed, and unmolested for the over three decades that he was associated with it.

[38] Mr. Phipps never saw Monica Gordon collecting rent at the premises and did not know any of their children doing so. He only knew Mr. Smith to collect rent at the premises and was the only one to repair it after the damage to the property in the late 1990s. He refuted the assertion that when Mr. McGowan came to the premises, it was substantially

in a state of disrepair, as not only was it in a state that they could work there but any garbage present was cleaned up by the workers. He also denied the rodent and pest problem, and that the roof was in disrepair.

[39] In cross-examination for Mr. McGowan, Mr. Phipps stated that when he went there he knew the business to be called Gordon and Smith, but did not know who the 'Gordon' referred to in the business name referred to. He only learned the name 'Keith Gordon' later in relation to the instant case. He explained that when he said that the property was burned down, he did not mean burned to the ground, but that it had to be renovated as the ceiling was burnt down and new roofing material had to be installed.

[40] When Mr. McGowan came to the premises, according to Mr. Phipps, there was no damage to the property, and it was in a good state of repair. He insisted that he was in fact at the premises when Mr. McGowan came to the premises and knew him before the trial in this matter began. He insisted that there was in fact a woodwork shop in operation at the property and that after a fire at the property, Mr. Smith carried out repairs there.

Mr. Kinkar Basu

[41] Mr. Basu, a businessman, entered into a lease agreement with Winston Smith in 2008, and describes him as the person authorized to rent the property to him. Under the terms of the lease, Mr. Basu occupies a shop on the lower floor where he operates his furniture and electronics business known as "NB Superstore", paying a monthly rental of Ninety Thousand Dollars (\$90,000.00). In September 2011, Mr. McGowan served him with Notice to Quit, but he demanded proof from as to his authority to do so. Mr. McGowan produced a document titled "CONVEYANCE" purporting to convey the said property to him. Mr. Basu refused to accept that the said document was authentic or that the Mr. McGowan had the authority to serve him with Notice to Quit and continued to recognise Mr. Smith as his landlord.

[42] Mr. Basu stated that Mr. McGowan regularly came to his business place uninvited and accompanied by men, sometimes armed with guns, shouting expletives at him and his staff and demanding that he remove from the premises. These 'visits', which occurred

at least once weekly, were during regular business hours, and usually preceded his customers hurriedly exiting the store; some never to return. One such visit, according to Mr. Basu, occurred on January 16, 2013, when Mr. McGowan entered his premises accompanied by several men, and began to destroy part of the premises, causing his customers to scurry away, frightened by the violence. The police were contacted but arrived after the men had departed. He nonetheless reported the matter to the Cross Roads Police Station.

[43] Prior to Mr. McGowan serving him the notice and his defiant refusal to leave, he had never experienced any such violence, harassment, and intimidation from any person during the conduct of his business. Since the conduct complained of, he saw his daily sales fall from One Hundred and Fifty Thousand Dollars (\$150,000.00) to between Seventy Thousand (\$70,000.00) and Eighty Thousand Dollars (\$80,000.00), an eventuality that he attributes to Mr. McGowan's intimidatory conduct and repeated disruption of his business.

[44] Mr. Basu denies that he had a cordial relationship with Mr. McGowan until he was served a notice to quit. He also refuted the claim that he had padlocked any shop other than his own, after service of the notice or that he refused to remove the padlock on the direction of the police.

Mr. McGowan

[45] Mr. McGowan, a businessman and the Managing Director of V. C. Electrical Depot Limited, began his business in October 2006 from his house. He stated that he determined that he needed a ground floor location with more visibility to attract customers off the street. He was introduced to Winston Smith, the agent for the property, who claimed that the owners lived overseas. Mr. McGowan reported that the main building of the property had obvious fire damage, rodent and insect problems, and garbage littering the area. The upstairs section had a burnt-out ceiling, broken windows, and saw evidence that a man, Paul Pitter, not only did cabinetry work there but also lived at the property.

[46] The downstairs section also showed obvious fire damage but was not as bad as upstairs. There were wide cracks in the concrete, no windows and doors on the downstairs section, but a metal shutter to the section fronting on Slipe Road. Mr. McGowan observed some rundown buildings on the property, filled with garbage and overrun with insects and rodents. He asked Mr. Smith why the property had not been repaired who informed him of the fire at the property some years prior, which caused significant damage and that the owners did not have the money to fix it up.

[47] Notwithstanding the rundown condition, in view of the desirable location, Mr. McGowan informed Mr. Smith of his interest in moving his business to the property, as it was a good location. He says that Mr. Smith offered him the entire property for \$150,000.00 per month. During their negotiation, he informed Mr. Smith that he did not need the entire premises, and they agreed to a lesser monthly rental for a portion of the downstairs section, which he spent about a month cleaning up and doing some basic repairs. He installed glass windows, a huge metal door to the back, a grill, tiled parts of the floor, and installed two toilets and two face basins for customers and staff.

[48] After moving to the property, Mr. McGowan discovered an illegal water connection and bought a water tank, pump, and water. He built a warehouse to store his inventory, paved a section of the back of the property, built a workshop, and a guardhouse for the watch man who worked at his business. He demolished the outbuildings and had two containers installed for storing inventory.

[49] After making these improvements to the property, Mr. McGowan was advised that the rental amount would be increased. He informed Mr. Smith that he did not agree with this as he had spent substantial money and time improving the property, but Mr. Smith persisted, resulting in a breakdown of their relationship.

[50] Mr. McGowan met Lascelles Bennett, a former employee of Keith Gordon, and a close friend of the family, who operated a cane juice business on a section of the property. Based on their discussion, Mr. McGowan began thinking of purchasing and renovating the property and asked Mr. Bennett to put him in touch with the owners of the property.

After their discussions, Ms. Miranda indicated a willingness to sell the property for seven Million Five Hundred Thousand Dollars (\$7,500,000.00), a figure that had already taken into consideration the fact of the extensive fire damage.

[51] Mr. McGowan was informed by Ms. Miranda, that the property had a registered title, and that she and her siblings had fled Jamaica after their mother and one of their brothers was murdered. After talking with his uncle, Mr. McGowan convinced his uncle to use one of his properties to secure financing for purchasing the property. He then spoke to two of Ms. Miranda's sisters, Sharon Gordon and Michelle, who were her mother's children, who agreed to sell the property to him.

[52] Ms. Miranda insisted that he should pay all outstanding property taxes and water, which she quantified at Two Hundred and Thirty- Eight Thousand Dollars (\$238,000.00), which he agreed to pay. They hired an Attorney-at-Law, Minette Lawrence, who prepared the related paperwork. It was agreed that approximately 60% of the purchase monies would be given to the vendors and the remainder was to offset the expenses of the estate, including legal fees, stamp duty, and death duties.

[53] In June 2011, Mr. McGowan paid Seven Million Seven Hundred and Fifteen Thousand Dollars (\$7,715,000.00) to Mrs. Lawrence towards the purchase price and the amounts he had agreed with Ms. Miranda to pay for Transfer Tax. He also paid up the outstanding property taxes and water bills, as well as the costs for preparing the documents for the sale of the property to him. In June 2011, he paid Fifty Thousand Dollars (\$50,000.00) as a deposit to have a survey diagram prepared in relation to the property. A diagram was done by Mr. Benjamin Bloomfield, but there was no indication on the diagram that the property was registered.

[54] The Transfer Tax and Stamp Duty on the sale of the Property were paid on or around August 24, 2011. Mr. McGowan had a photocopy of the Transfer Tax Certificate, and the stamped Conveyance dated June 30, 2011, showing the assessment and the payment of the sum of Three Hundred and Sixty-Four Thousand Dollars (\$364,000.00) as Transfer Tax. The amount for Transfer Tax was higher than expected, as the Stamp

Commissioner had valued the Property for the sum of Nine Million One Hundred Thousand Dollars (\$9,100,000.00) and calculated the Transfer Tax based on that figure.

[55] Upon receiving possession of the Property in September 2011, Mr. McGowan received Letters of Possession and correspondence to JPS. He had stopped paying rent to Mr. Smith and caused notices to quit to be served on Leroy Thorpe and Mr. Basu. He says that his previously good relationship with Mr. Basu broke down after service of the notice to quit.

[56] Upon being given possession of the Property, Mr. McGowan had an estimate for proposed renovation of the upstairs section of the Property prepared, and Ral Construction carried out extensive renovation works. He also re-did the plumbing work on the Property and applied for water supply in his name. Since then, he has received water bills for the Property in his name.

[57] In September 2011, Mrs. Lawrence prepared documents for applying for registered title to the Property in Mr. McGowan's name, supported by statutory declarations given by Stanley Crooks, Lascelles Smith, and Ms. Miranda. When Mrs. Lawrence filed an application on his behalf to bring the Property under the Registration of Titles Act, he learned that the Property had a registered title, and the application was abandoned. In it, Ms. Miranda swore:

"The deceased [her mother] had seven children; Harold Watson, Ms. Miranda Miranda, Sharon Gordon Gordon, Peter Gordon, Manuel Gordon, Eاون Gordon and Michelle Gordon, of which Peter Gordon and Eاون Gordon died, subsequent to her death, leaving no issue. We unanimously decided that the properties and possession of our mother will be disposed of by unanimous consensus, and that I would make the application for administration of the Estate."

[58] Mr. McGowan, after he stopped paying rent to Mr. Smith, discovered that he was claiming ownership of the property, and contending that it was given to him by Keith and Monica Gordon or acquired by adverse possession. In February 2012, Mr. McGowan discovered that Mr. Basu had padlocked one of the shop units on the property and refused to grant anyone access. He filed a report with the Cross Roads Police station and

eventually had the padlock removed. He denied Mr. Basu's allegations of harassment and threats and counter-alleged that Mr. Basu was the aggressor.

[59] On February 7, 2012, Mr. McGowan received correspondence from Mrs. Lawrence enclosing a Statement of Account relating to his purchase of the Property and legal services for getting title and dealing with the occupants of the Property. He made two payments of One Hundred and Eighty-Three Thousand One Hundred and Twenty –Five Dollars (\$183,125.00), one on 21st of February 2012 and the other on 27th of February 2012. Prior to these payments, he had also paid Two Hundred and Fifty Thousand Dollars (\$250,000.00) towards settling the said Statement of Account.

[60] In 2012, Ms. Gordon contacted him to say she had been deported from the United States and was back in Jamaica. She asked him to pay rent, claiming that the transaction was not yet complete. He stated that at no point did she indicate that she has an issue with the sale of the property to him.

[61] Mr. Basu also sued him in 2012 claiming he had been occupying the property since the 1990s, even though he knew him to have moved into the property as a tenant after he did. He has since discontinued this claim, but Mr. McGowan kept copies of the Fixed Date Claim Form and supporting Affidavit filed by Mr. Basu.

[62] In January 2013, Sharon Gordon came to see him and had him sign something saying he would pay rent from the time he had last paid rent to January 2013. By then, he had paid over all the purchase money and the share of the costs, as agreed, to Mrs. Lawrence. Based on the legal advice he received after paying the first month, he made no further payments to Sharon Gordon.

[63] On January 17, 2013, there was a fire at the property, which caused damage and for which he obtained a Fire Report. Ms. Miranda obtained Letters of Administration in the Estate of Monica Gordon in October 2013. By early 2014, Mr. McGowan became frustrated with Mrs. Lawrence's handling of the matter, as the matter had become complicated, and he was still unable to gain possession to the entire property. This affected his use of the property as a potential source of rental income, which he needed

to repay the loans taken to finance the purchase of the property, resulting in it falling into arrears and him being under undue pressure from his bankers.

[64] In June 2014, Mrs. Lawrence confirmed that she continued to represent the interests of the Estate of Monica Gordon. On October 17, 2014, Mrs. Lawrence copied his Attorneys-at-Law on an email requesting written confirmation of her instructions on how to proceed with the completion of the sale.

[65] Mr. McGowan pursued an ancillary claim against Ms. Miranda to ensure the recovery of the sums paid on account of the purchase price, in the event that Mr. Smith succeeds in defeating the Estate's interest, as well as in compensation for the improvements made to the property over the years in reliance on the agreement. To his disappointment, Ms. Miranda denied having the requisite authority to sell the Property to him and he refutes her contention that the sale was ever aborted.

[66] Mr. Basu has never compensated him for his use and occupation of the property. He recently requested a report from Victoria Mutual Property Services Limited on the rate of rent for the space occupied by Mr. Basu for the period 2011 to present. Mr. Smith continues to collect rent from Mr. Basu and has not accounted for any of these monies. Since he made the purchase, Mr. McGowan says he has been maintaining the Property, save for the portion occupied by Mr. Basu, for which he has no access and has been paying the property taxes.

[67] In amplification, Mr. McGowan denied coming to his premises with men and using profanities and intimidating the occupants at the property. Mr. McGowan denies harassing and intimidating Mr. Basu, his staff and customers, and entering his business place with armed men. Had this in fact occurred Mr. McGowan stated, he would have been criminally charged and he has a clean criminal record.

[68] He stated that when he first went to the property, upstairs was badly fire-damaged - the zinc roofing was destroyed, and he could see through to the sky. To the back of the building was a lot of debris and garbage. He paid over \$7,500,000.00 to the estate of

Monica Gordon and as such could not be in arrears of rent and in any event, he owes no rent to Mr. Smith.

[69] Mr. McGowan contends that Mr. Smith had no business at the property when he got there and when he would visit monthly, he would only see him seated on the roadside. He indicated that it was not necessary to serve Mr. Smith with notice to quit the premises as he had no business on the property, neither did he maintain the property. He spoke to having had a brief interaction with Mr. Phipps during which he claims it was Mr. Phipps who got violent with him on their first meeting.

[70] On cross-examination for Mr. Smith, it was suggested that the reason he did not give Mr. Smith a notice to quit was because he knew Mr. Smith to be his landlord and not because he had no business there, as he contended. There were occupants at the property such as Paul Pitter, who was upstairs and Scarry, who was to the back. Mr. McGowan repeatedly rejected the suggestion that Mr. Smith had a viable business operating from the property. There was, according to his response, fire damage to the main building, broken out windows, and scorch damage. He also maintained that one could look through sections of the roof to the sky and that there was a fire report that supported his contention.

[71] Mr. McGowan, who was not associated with the property in 1998 when a fire occurred, denied that Mr. Smith renovated the property after the fire and that he did the renovations himself. He also produced estimates for proposed work to renovate the property in November 2011. He said he never tried to recover these sums expended as, to his mind, he was the owner of the property. In discussions with Mr. Smith explaining the condition of the premises, Mr. Smith informed him that the owners of the property did not have the money to effect repairs to the property.

[72] In addition to no legal water connection, Mr. McGowan claimed that there was an illegal electricity connection at the property and that he had the property wired for electricity and applied for a meter to be installed in the name of his company. He also insisted that there was illegal water connection at the property, which forced him to install

a tank at the property and have water trucked there. In re-examination, Mr. McGowan explained that when he came to the premises, there was no legal water connection and through his efforts directly and through his attorney at law, he managed to get a legal connection in 2011 and get his own meter installed.

[73] He agreed that he considered himself a tenant at the time he first went to the premises and acknowledged Mr. McGowan as his landlord. He stated that he got permission of Mr. Smith to occupy the place where he placed the 40-foot containers but denied that he continued to do his extensive work there despite Mr. Smith's protestations.

[74] Mr. McGowan agreed that Mr. Smith had in fact rented him a particular section of the property and that the initial offer was to rent the entire property for One Hundred and Fifty Thousand Dollars (\$150,000.00). He rejected the suggestion that Mr. Smith operated a factory to the back and as such insisted that he could not have rented the entire property. He agreed that Paul Pitter was at the property at this time and Lascelles Bennett operated his cane juice business outside towards the parking lot. He insisted that Keith and Monica Gordon are the registered owners, and that Mr. Bennett knew their children as he even took Ms. Miranda to school as a child.

[75] Mr. McGowan insisted that Mr. Smith, like Mr. Bennett, was an agent for the registered owners and does not regard him as the owner. He stated that he learned that there were registered owners for the property during at least his second conversation with Ms. Miranda and that it was not for the first time when he executed the conveyance document. He insisted that the property was in a deplorable state why he made an initial offer for purchase of the property of Four Million Dollars (\$4,000,000.00), and the figure of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) was based on a later counteroffer.

[76] Mr. McGowan was cross-examined on behalf of Mr. Basu and stated that after he was given possession of the entire property, he sought to serve Mr. Basu with notice to quit the property through his Attorney-at-Law. McGowan denied being present when the

notice was served and that he brought men to the premises to intimidate Mr. Basu and his staff or that it was his practice to walk around with men to intimidate people.

[77] Mr. McGowan claimed that he made efforts to remove the occupants of the property but denied using brute force to have Mr. Basu removed from the premises. He denied becoming hostile to Mr. Basu, his staff, and customers, and going to Mr. Basu's premises accompanied by five men to scare customers. He also denied going to the premises at intervals with armed men on occasion to Mr. Basu's premises and returning to Mr. Basu's premises with men to disrupt his business.

[78] Mr. McGowan asked Mr. Basu to remove a padlock attached to the gate sometime in late 2011 or 2012. After speaking with the police, it seems the padlock was removed, and he denies that this was another form of harassment directed at Mr. Basu.

[79] On behalf of Ms. Miranda, Mr. McGowan insisted that the counter-mentioning \$7,500,000.00 came from Miss Miranda. He denied that she had a valuation report at the time that she responded to the (\$4,000,000.00) million offer and that there was ever a counteroffer of Ten Million Dollars (\$10,000,000.00) made by Ms. Miranda. He insisted that he had spoken to three sisters who were excited at the offer because they were getting no money from Mr. Smith.

[80] Mr. McGowan paid taxes based on the unimproved value of the land and claims that Miss Miranda knew of the deplorable condition of the property from the beginning. He was taken in his evidence through the attendant sums paid for legal fees and agreed that he also paid transfer tax and death taxes related to the estate to Ms. Lawrence for a total of over Eight Million Dollars (\$8,000,000.00).

[81] Mr. McGowan claimed that Mr. Bennett had informed him that he used to collect money on behalf of the Gordons and would send to Ms. Miranda. He explained that he spoke to Mr. Bennett about purchasing the property from Ms. Miranda instead of Mr. Smith because Mr. Smith had attempted to increase the rent on him. He agreed that he paid rent to Sharon Gordon out of duress and that the agreement prepared under that arrangement was ill-advised but stopped when he changed Attorney.

Mr. McGowan denied that he deliberately sought to deceive Mr. Smith on purchasing the premises from behind his back. He was aware of a property in Barbican that Mr. Bennett collected rent for and on behalf of the Gordon family.

Ms. Miranda

[82] Ms. Miranda, a Nurse's Aide and the 2nd Defendant and Ancillary Defendant in the matter, is the daughter and administrator of Monica Gordon's estate. Her mother was one of the joint registered owners of the premises. She received Letters of Administration in her mother's estate on October 17, 2013.

[83] Monica Gordon predeceased her seven children, to include, Sharon Gordon, Harold Watson, Edmond Gordon, Michelle Gordon, and two sons Ian and Peter Gordon, who died without any children. Before her death, Monica Gordon was responsible for the collection of rent for premises situated at Barbican and the subject property at Slipe Road in the parish of Saint Andrew. After her mother's death, she and her siblings were responsible for collecting rent from tenants at both premises, including Mr. Smith.

[84] Ms. Miranda's younger sister Sharon Gordon began collecting rent for both premises until 1995 when it was agreed that Sharon Gordon would collect rent for the Barbican property, while she (Ms. Miranda) would continue to collect rent for the Slipe Road property. This continued until Sharon Gordon returned to America (in 1996 or 1997), and Ms. Miranda assumed responsibility for the collection of rent. In 2011, she agreed to sell the Slipe Road property to Mr. McGowan. She was paid a deposit of Four Million Dollars (\$4,000,000.00) on behalf of herself and her siblings, but the sale was never completed, as she discovered that she had no legal authority to sell the property.

[85] The "Conveyance" done in favour of Mr. McGowan on June 30, 2011 in respect to the property was not valid, as the property would not have been conferred to her until the Grant of the Letters of Administration on October 17, 2013. Ms. Miranda became aware of Court proceedings involving Mr. Smith, Mr. Basu, and Mr. McGowan but did not attend any court proceedings.

[86] She disagreed that Mr. McGowan, Winston Smith, and Mr. Basu have any entitlement to the property, as the premises belong to Monica Gordon children, the beneficiaries of her estate. She claimed that Mr. McGowan indicated his consent to paying the sum of Six Hundred and Forty Thousand Dollars (\$640,000.00) for use and occupation of the premises up to April 2013, but these sums have not been paid and remain outstanding.

[87] Mr. Miranda and her siblings, as beneficiaries of Monica Gordon's Estate, have been unsuccessful in finalizing their parents' estate and distributing it. They have made efforts to have Mr. Sylvester Morris, Attorney-at-Law and Executor and Trustee of Keith Gordon's Estate, complete administration but have been futile.

[88] Ms. Miranda supports the contention that Mr. McGowan had been in contact with her through Mr. Bennett, whom she claims she has known since childhood. She recalls an instance where her mother went to collect rent from Mr. Smith. Ms. Miranda asserted that it was in fact quite commonplace for her to visit the property, and in recent years even her daughter had visited it.

[89] Ms. Miranda's evidence is that different persons would collect rent on behalf of the family, including herself, her sister (Sharon Gordon), her children's father, her uncle, and her brother David. After the death of her brother, David, the position as to who would collect the rent was affected by whether she or her sister was abroad. However, one or the other sister would always look about her parent's properties, it seems depending on who was in the country.

[90] Regarding the attempted sale of the property to Mr. McGowan, she stated that Mr. McGowan had made an initial offer of Four Million Dollars (\$4,000,000.000, which she found woefully insufficient due to a valuation she obtained indicating a value of Twenty Million Dollars (\$20,000,000.00). She denied that she ever authorized Mr. McGowan to pay property taxes or utility bills there as he did not own the property.

[91] Ms. Miranda also denied that there was ever an agreement with Mr. McGowan that he would pay 60% of the agreed purchase price to her with the remaining 40% going to

offset the expenses of the estate. While she admitted that she had agreed to a purchase price of Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) million, this she did reluctantly as she was under stress at the time and there was no other arrangement.

[92] She was not aware that Mr. McGowan had been put in possession in September 2011, and she claims that this was explained in large part by the fact that his lawyer represented both her and Mr. McGowan and she had never met Miss Lawrence in person; only over the phone.

[93] In cross-examination on behalf of Mr. Smith, Ms. Miranda stated that when Mr. Bennett contacted her for Mr. McGowan, that was the first that she had interacted with him. While she knew he was a tenant, prior to 2011 her main problems were with Mr. Smith. She denied that she was only aware of what was happening at the property based on information received from others rather than her personal knowledge.

[94] Ms. Miranda mentioned Mr. Bryan, who operated a business from the property, and that when he went to prison, the business fell into difficulty, and Mr. Smith was unable to maintain the business profitably. When the business failed, they began to lease out the remainder of the property. Mr. Bryan was the accountant and not Mr. Smith's agent as Mr. Smith only made furniture. She made an unsubstantiated assertion that Mr. Smith was engaged in a credit card scam and that he burned down the buildings of the property.

[95] Miss Miranda insisted that Mr. Smith acted as agent for her and the family when he collected rent from tenants at the property. She did not accept the suggestion that Mr. Smith collected rent from Mr. Basu and Mr. McGowan for his own use acting as owner of the property. She denied being aware of any arrangement between Mr. Campbell from the Credit Union nearby and Mr. Smith regarding the operation of a restaurant at the property to service staff from the Credit Union.

[96] Miss Miranda insisted that Mr. Smith was her father's business partner and that it was her father who handled the money. She also asserted that her mother would never allow Mr. Smith to owe her rent. Mr. Smith would also give money to her father whenever he asked for it because it was he (her father) who had provided the money to start the

business, not Mr. Smith. She also asserted that Mr. Smith had to pay rent to her father but had no proof in the form of any documentation.

[97] Miss Miranda insisted that she was very close to her mother but could provide no proof of an arrangement to collect rent from either Mr. Smith or anyone on the property, whether by her or by her brother, David, who is now deceased. She did not know if David had proof and if so, what he would have been done with it after his passing.

[98] Miss Miranda claimed that in the late 90s she was still collecting rent at the premises traveling back and forth to the island. She said that Mr. Smith, her aunt (Grace Clark), and uncle (Lester Price), were then tenants at the property. She could not recall the names Charmaine Pennant and Calvin James as being tenants at the property during that time.

[99] Miss Miranda rejected as absolutely untrue that she and her siblings fled because Mr. Smith was ripping them off. She also denied that she and her siblings abandoned all their parent's properties, including the one located at 77^{1/2} Slipe Road.

[100] Miss Miranda stated that she did not know much about the law and that she gave instructions to her Attorney and provided her with the title search for the property. She denied the suggestion that she did so with the intention of denying Mr. Smith's right to the property. She agreed that when Sharon Gordon discovered the attempted sale, she did not approve of it but proceeded to execute a deed of conveyance based on her confidence in her Attorneys-at-Law ability to do the right thing.

[101] Ms. Miranda was presented with a copy of the deed of conveyance and agreed that she signed the sale agreement after the payment of \$7,500,000.00. She maintained that she had every intention to compensate her siblings for the sale of the property. She had an argument with Mr. Smith over her allegation that he had burned the premises down and denied that Mr. Smith was the one who maintained the property as she had abandoned it since 1988.

[102] Ms. Miranda under cross-examination on behalf of Mr. Basu said that she knew what type of business he operated but had never collected rent from him. She contended that Mr. Smith was her agent to collect rent from Mr. Basu and Mr. McGowan and had handed the rent over to her that was collected. She admitted that she had never personally attended to any repairs at the property, but she had him attend to it on her behalf in the past.

[103] Ms. Miranda was cross-examined on behalf of Mr. McGowan, and repeated that she was one of seven children for Monica Gordon. She maintained her position that Mr. Smith was entrusted as the agent managing the Slipe Road property but described him as unreliable in that role. She also recounted that Mr. Smith was in business with her father, but while her father brought the resources to the table to start the business, Mr. Smith brought his talent in furniture making. She reiterated her suspicion of him and believed that he has mishandled rental income and was involved in scams.

[104] Ms. Miranda acknowledged that there was fire damage to the property, but she continued to dispute the extent of the damage as alleged by Mr. McGowan. She agreed that Mr. McGowan paid \$7,500,000.00 for the purchase of the property in 2011 but insisted that the sale was never finalized and that Mr. McGowan had only paid a deposit.

[105] Ms. Miranda disagreed with Mr. Gordon's statement that when they left Jamaica, they left agents in charge of their properties. She stated that she never felt unsafe in Jamaica but because she had to be abroad from time to time, there was the need to trust Mr. Smith to manage the property.

[106] Ms. Miranda did not find Mr. Smith to be reliable regarding returning rental income and agreed that there were possibly other tenants at the property that he did not know about. She also mentioned that after her mother's death in 1988, she would visit Jamaica regularly every summer and every other holiday, except for one year where she was ill.

[107] Miss Miranda claimed that she had personal knowledge of the destruction and that despite her belief and accusations, Mr. McGowan had never confessed to causing the fire. She also denied that there were instances where Mr. McGowan fixed sections of the

property to suit himself, such as installing face basins in two bathrooms and cleaning the area up. She did not find it surprising that he tore down old shacks.

[108] Ms. Miranda agreed that her Attorney, Mrs. Lawrence, sent her paperwork relating to the conveyance via email. She did not agree that Mrs. Lawrence sent her a statutory declaration, which she had signed and notarized. She also agreed that she was sent an Oath of Administratrix, which she also had notarized. She was shown the conveyance and did not see a reference to the property as being for 77^{1/2} Slipe Rd.

[109] Ms. Miranda was taken through several transactions done by Mrs. Lawrence on her behalf, and it was suggested that the full purchase price was \$7,500,000.00, with the balance of the purchase prices of Three Million Five Hundred Thousand Dollars (\$3,500,000.00) being left with her to address costs related to the administration of her mother's estate. She also acknowledged that she has never paid legal fees to Mrs. Lawrence and that they had never discussed fees nor had she received a statement of account from Mrs. Lawrence.

[110] Ms. Miranda denied that the renovation at Barbican was done using sums from the sale of the property at Slipe Road, but instead from lottery winnings. She also denied that extensive rewiring of the premises, replacing broken windows, and repairing the badly damaged roof was included in the renovation. She eventually agreed that there was termite damage in sections of the property.

[111] Ms. Miranda insisted that her siblings had not unanimously agreed for her mother's estate to be disposed of but that she acted alone. She denied that when Mr. McGowan contacted her, she put him in contact with her sisters Sharon and Michelle, a position she held to despite an email shown to her. It was suggested to her that she affirmed the sale of the property through her conduct and confirmed to Mr. Smith that she had sold it, to which she responded that the transaction was never completed.

Sharon Gordon

[112] Ms. Gordon, a businesswoman from Retreat in St. Mary, is one of the beneficiaries of her mother's estate. She and her sister, Ms. Miranda, are the owners of the property at Slipe Road and Barbican, for which she has been collecting rent since her father's death. She knows Mr. Smith, who operated a furniture business at the property, as a paying tenant. After her father's death, the siblings took turns collecting rent from the properties.

[113] Ms. Gordon and Miss Miranda agreed in 1995 to divide the responsibility of collecting rent from the two remaining properties between them. She would collect rent from Mr. Smith either personally or through Mr. Marsh, her child's father, and they had no problem with Mr. Smith at that time. She claims that Mr. Smith never claimed ownership or right over the property beyond as a tenant required to pay rent.

[114] When she became aware of Ms. Miranda's intended sale of the property to Mr. McGowan for Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) she did not agree with it. She requested that a valuation be commissioned and was not in agreement with Mr. McGowan's Attorney handling all the paperwork. She was concerned that she and her siblings were all overseas and Mr. Smith was to vacate the premises due to his illness, and no valuation had been conducted to determine the true value of the property.

[115] Ms. Gordon admits to not being aware that Mr. Smith had rented a section of the property to Mr. Basu or that he claimed to be doing so in his own right and not as their agent. She and her siblings treated the Slipe Road Property as their own and did not give possession to Mr. Smith. She contends that she and her siblings, as beneficiaries of Monica Gordon's estate, are entitled to the property situated at Slipe Road.

[116] In evidence in amplification of her witness statement, Ms. Gordon indicated that she is now married and no longer lives in Retreat, Saint Mary, but in Brooklyn, New York in the United States. She has visited the property as a child and as an adult, but did not see Mr. Smith there whenever she visited. She used to collect rent from Mr. Smith while he operated his furniture business at the property, and over the years different members of the family and close associates have done so.

[117] After the fire in the late 1990s, she visited the premises, which she nonetheless found to be in fairly good condition. She denies being aware of any conversation between her sister and Mr. McGowan in 2011 regarding the sale of the property but learned about it after her deportation in May 2012. While in custody of the US authorities, her sister informed her of the intended sale of the property, which she knew prior to 2011, had a registered title. She discovered the name of the Attorney-at-Law handling the matter and eventually met with Mr. McGowan regarding the rental of the premises. Ms. Gordon is not aware of any sums paid over in relation to the sale being used to renovate the rental property in Barbican.

[118] On the cross examination for Mr. Smith, she maintained that she was not in agreement with the sale of the property when she was made aware of it. She was aware of Gordon and Smith furnishing, a business that had been operating at the premises for a number of years. She did not know whether her father jointly owned that business with Mr. Smith as his business partner.

[119] She acknowledged that she had no tenancy agreement with Mr. Smith but denied that this was because no such agreement ever existed. She said there was no need to prepare a new agreement as she walked into an existing relationship and simply continued to collect rent. She also indicated that due to her immigration status, she could not return to Jamaica regularly. She left again in 1995 and did not return until 2012 when she was deported. She maintained that Mr. Smith was their agent, and they had to trust him despite his getting into credit card trouble for which she says Mr. Bryan went to jail.

[120] She did not agree that their failure to manage the property resulted in Mr. Smith's accrual of adverse property rights. She had no proof either that Mr. Smith caused the fire at the property or that he received insurance money from fire but knows that it was quickly repaired. She disagrees that Mr. Smith used his personal money to repair the property. She acknowledges that there were long periods of time that she was not at the property and says that the maintenance of it was not done by her. Mr. Smith had never acknowledged her or her family as owners of the property.

[121] On cross-examination on behalf of Mr. Basu, Sharon Gordon indicated that while that was no longer the case, generally, she had a good relationship with her siblings. Any issues had largely to do with the estate of Monica Gordon and Miss Miranda's handling of the sale of the property that forms a part of her mother's estate. She says that Ms. Miranda was neither the Administrator for her mother's estate nor did she obtain the permission of the other beneficiaries to sell the said property.

[122] She believes that she would have been made aware of whether there were tenants on the property or if someone had been authorized to manage a property on her behalf or that of her siblings. She was not aware that Mr. Smith had rented the premises to Mr. Basu. She entered into an agreement with Mr. McGowan in 2013 to pay the outstanding rent between 2011 and 2013 but denies putting pressure on him to pay the sum and believes that he did so of his own free will.

[123] In signing the new agreement, Mr. McGowan had knowledge that the "sale" had not been proceeded with in the right and correct manner and that he had no authority to evict Mr. Basu or any tenant. In response to a question as to whether she was aware that he had harassed Mr. Basu to get him off the premises, she said she would not be surprised at that information as they were all fighting for the property.

[124] Sharon Gordon testified that her relationship with her siblings began to break down in 2012 after she was deported. She and her sister, Ms. Miranda, were still on good terms when they jointly applied to represent their mother's estate, however, the siblings communicated about things that affected the family. Ms. Gordon did not agree with Ms. Miranda's assertion that Mr. Smith was her agent for the Slipe Road property. After her mother died, as she knew that she had difficulty getting Mr. Smith to pay over the rent, he collected as agent and even struggled to pay his own rent as a tenant.

[125] Ms. Gordon agreed that the non-payment of the sums collected, and his outstanding rent would adversely impact the financial status of the Estate. She also agreed that the sale of the property was a major issue that affected the estate. She first met Mr. McGowan in person when she visited the property and not over the phone. She

denied that it was Ms. Miranda who put her in contact with Mr. McGowan when she was deported and that she was excited at his offer to purchase the property.

[126] Ms. Gordon denied that she had told Mr. McGowan that Mr. Smith had been ripping them off from before the fire and that he had stopped paying rent to her and her siblings. Ms. Gordon also denied being the one to ask Mr. McGowan about the washing machine, but that he somehow knew that she needed one and made the offer. She insisted that the only money she demanded of him was the outstanding rent. She agreed that there was an agreement to make four payments to her, of which she only received one payment.

[127] Ms. Gordon's evidence that the arrangement between herself and Ms. Miranda was that she would take care of the Slip e Road property, while Ms. Miranda would take care of the Barbican property. She argued that her falling out with Ms. Miranda relates to the fact that the property in her view was valued at least Forty Million Dollars (\$40,000,000.00) and agreed the purchase price of \$7,500,000.00 was low.

[128] In re-examination, Ms. Gordon stated that prior to getting married, she had been living with her current husband since 2007 and as such was not hard up for money as suggested by the evidence of Mr. McGowan. She agreed that she had made mention of Mr. Basu prior to 2015 from a document she swore to in 2012 but explained that she did not know the extent of his occupation as a tenant. She knew of another Counsel who had been dealing with the matter before Ms. McFarlane of counsel.

Submissions

Submissions of Winston Smith

FACTS AS AGREED

- *Mr. Winston Smith rented sections of the subject property to Mr. McGowan and Mr. Basu;*
- *Mr. McGowan has stopped paying rent to Winston Smith since October 2011 to date;*
- *Mr. Winston Smith served a Notice to Quit on Mr. McGowan;*

- *Mr. McGowan is still in occupation of the subject property;*
- *Mr. Basu is still a tenant of Mr. Winston Smith at the subject property and pays rent to Mr. Smith for his (Mr. Basu's) use and occupation of same;*
- *The subject property remains registered in the names of Keith Gordon and Monica Gordon (both deceased). Keith Gordon died before Monica Gordon so the interest in the property had passed to Monica Gordon and on Monica Gordon's death said subject property passed to her Estate;*
- *At the time Mr. McGowan averred to have bought the subject property, the Deed of Conveyance was improperly executed by Ms. Miranda as there was no consent from other beneficiaries of Monica Gordon's Estate and neither was there a Grant of Letters of Administration so Ms. Miranda did not have the authority sell the property;*
- *No transfer document was executed by Ms. Miranda in relation to the purported sale of the subject property.*

ISSUES TO BE DETERMINED

- *Whether the Claimant, Winston Smith is entitled to be registered on title as the proprietor of property known as 77 ^{1/2} Slipe Road, Kingston 5 in the parish of Saint Andrew registered at Volume 535 Folio 4 of the Register Book of Titles by virtue of adverse possession.*
- *Whether the Claimant, Winston Smith is entitled to rental income from the 1st Defendant in respect of 77 ^{1/2} Slipe Road, Kingston 5 in the parish of Saint Andrew registered at Volume 535 Folio 4 of the Register Book of Titles for the period October 2011 and continuing.*
- *The effect, if any of the alleged Deed of Conveyance executed between the Mr. McGowan and Ms. Miranda in relation to property known as 77 ^{1/2} Slipe Road, Kingston 5 in the parish of Saint Andrew registered at Volume 535 Folio 4 of the Register Book of Titles.*
- *Whether 1st Defendant, Mr. McGowan, is the owner of property known as 77 ^{1/2} Slipe Road, Kingston 5 in the parish of Saint Andrew registered at Volume 535 Folio 4 of the Register Book of Titles.*
- *Whether the Claimant, Mr. Basu is entitled to surrender possession of the portion of property he occupies at 77 ^{1/2} Slipe Road, Kingston 5 in the parish of Saint Andrew registered at Volume 535 Folio 4 of the Register Book of Titles.*
- *Who is entitled to the rental income from Mr. Basu's occupation of 77 ^{1/2} Slipe Road, Kingston 5 in the parish of Saint Andrew registered at Volume 535 Folio 4 of the Register Book of Titles.*

[129] The cornerstone of the case for Mr. Smith is founded on his assertion that he acquired the property located at 77^{1/2} Slipe Road, Kingston, by virtue of adverse possession. The submissions challenge the alleged sale of the property to Mr. McGowan and emphasize that Mr. McGowan remains a tenant, liable for rent arrears. Counsel argues that Mr. Smith's possession meets all the legal requirements of adverse

possession, supported by witness testimony and relevant case law. Additionally, the submission highlights Mr. Smith's entitlement to recover outstanding rent from McGowan and asserts that the purported sale of the property was null and void.

[130] Counsel for Mr. Smith argued that since 1988, following the death of Monica Gordon, Mr. Smith exercised uninterrupted, exclusive possession of the subject property. It was submitted that at no point did the beneficiaries of the Gordon estate assert control or interfere with Smith's occupation of the premises. Counsel submitted that the essential elements of adverse possession were satisfied on two bases. The first basis of actual possession it was submitted was satisfied in the contention of Mr. Smith that he occupied and controlled the property, conducting business operations, renting sections to tenants, maintaining the premises, and paying property taxes. The second basis is that his possession was with the intent to exclude others, *animus possidendi*, as Mr. Smith's contention is that his actions demonstrated an intention to exercise ownership rights to the exclusion of all others, including the estate beneficiaries.

[131] In **Farrington v Bush** (1974) 12 JLR 1492, Graham-Perkins JA highlighted the acts of possession as follows:

"It involves the co-existence of two essential elements, namely the assumption of actual physical possession by, and the presence of a particular mental element directed towards the true owner in the adverse possessor. It is in our view a mistake to think that mere entry upon, and user of the land of another can, without more, be equated with an assumption of possession. It must be possession of such a nature as to amount to an ouster of the original owner of the land.. There must be positive and affirmative evidence of acts of possession, unequivocal by their very nature and which are demonstrably consistent with an attempt, and an intention, to exclude the possession of the true owner. "

[132] Counsel stressed that Mr. Smith's actions, which include renovating the premises, renting out sections, and managing the property, all constitute clear and affirmative acts of ownership that have displaced the estate's interest. The issue that is central to the determination of this matter is underscored by the authority cited by the counsel of **Farrington**, which is that mere physical presence on land is insufficient to establish adverse possession. Rather, the possessor is required to perform clear acts of ownership that ousts the title of the original owner. Counsel relied on the evidence that Mr. Smith

assumed complete control over the property after Monica Gordon's death in 1988 in order to apply the principle. The argument is that his actions were a clear exclusion of the estate's beneficiaries and satisfied the criteria outlined by **Farrington**.

[133] Additionally, Counsel invoked Section 85 of the **Registration of Titles Act**, which enables an individual who has acquired property through possession to apply for registration as the legal owner. Counsel argued that Mr. Smith is entitled to registration because he has maintained possession for over 30 years, which is significantly longer than the statutory 12-year period required by the Limitation of Actions Act. Consequently, this establishes a *prima facie* right to registration under the Act. This argument centres on the public policy that supports adverse possession, which is to ensure that property remains productive while also penalising proprietors who have been inactive.

[134] The controversy centres around the legitimacy of the deed of transfer that Ms. Miranda executed, as she is a beneficiary of Monica Gordon's inheritance. The counsel for Mr. Smith argues that the purported sale to Mr. McGowan is void *ab initio* due to Ms. Miranda's lack of authority. Her actions were legally ineffectual at the time of the sale in June 2011, as she had not yet obtained a Grant of Letters of Administration.

[135] It was argued that Mr. McGowan is not aided by the doctrine of relation back. Although the doctrine enables the retroactive validation of an administrator's actions, it is only applicable when those actions are beneficial to the estate or are subsequently ratified by the beneficiaries. However, in this instance, it was argued that one of the beneficiaries of Monica Gordon's estate provided evidence that she had opposed the sale from the outset and had refused to ratify it, thereby undermining the relation back doctrine. There was no consent or written permission from any other beneficiary to the Estate that granted Ms. Miranda the authority to act on behalf of the Estate. The Deed of Conveyance (clause 2) erroneously states that all siblings have consented to Ms. Miranda exercising control over the property for the benefit of all beneficiaries. It was also argued that the doctrine is undermined by the fact that the property was sold for less than it was valued at the time.

[136] Counsel also emphasised the inconsistencies in Ms. Miranda's statutory declaration, which was executed on June 24, 2011, but claimed that the sale occurred on June 30, 2011. The conveyance is procedurally defective due to the discrepancy and the absence of appropriate transfer documents. Mr. McGowan's claim is rendered null and void by the conclusion of counsel that he did not acquire any legal or equitable interest in the property. Furthermore, Sharon Gordon, a beneficiary of the Estate, strongly denies that her subsequent consent to her sister, Ms. Miranda's, appointment as Administrator of Monica Gordon's Estate was ever intended to facilitate the sale of the subject property to Mr. McGowan, and therefore, no ratification was granted

[137] Counsel contends that Mr. McGowan is still a tenant of Mr. Smith. The lease, which was initiated in 2007, necessitated that Mr. McGowan pay Fifty Thousand Dollars (\$50,000.00) per month. However, in October 2011, Mr. McGowan discontinued payments, claiming that he had acquired the property. Counsel argues that the purported purchase was invalid, and as a result, Mr. McGowan is still subject to the lease covenants as outlined in the Rent Restriction Act.

[138] Additionally, Mr. McGowan's unauthorised modifications to the property, including the installation of a warehouse and metal doors, and his refusal to pay rent, constitutes multiple breaches of the lease. The submission is that Mr. McGowan is in arrears of Four Million Nine Hundred and Fifty Thousand dollars (\$4,950,000.00) in rent, with ongoing rent accruing at a rate of Fifty Thousand Dollars (\$50,000.00) per month.

[139] Additionally, Counsel refuted the claim that Mr. Smith served as an agent for the beneficiaries of the estate of Monica Gordon, which was deemed unfounded. Counsel cited Sharon Gordon's evidence, which established that Mr. Smith never acted on behalf of the estate. Mr. Basu, who testified that Mr. McGowan used intimidation tactics to compel tenants to vacate, was also cited by counsel. Mr. McGowan, according to Mr. Basu, invited armed individuals onto the premises and used their weapons to intimidate tenants into vacating. Counsel argues that these actions are indicative of bad faith and substantiate the request for an injunction that would prevent Mr. McGowan from engaging in any additional property interference.

[140] Ronald Phipps' testimony was submitted as evidence that Mr. Smith maintained control over the property without any interference. Mr. Phipps testified that he had been employed at the premises for more than three decades, during which time he observed Smith's management and rental of the property. The property was under Smith's control, according to Mr. Phipps, and no other individual or entity claimed any authority over it during that period.

[141] The submission posited that Mr. Smith ran a prosperous furniture store at the subject property, rented out sections of the property to a variety of tenants, repaired and maintained the premises, renovated the premises, and paid the property taxes. In or around 1998, a section of the subject property was consumed by fire. Mr. Smith's testimony indicates that he conducted substantial renovations on the property. Under cross-examination, Mr. Smith elucidated the substantial renovation work as follows: "Workmen begin by cleaning up the area, purchasing materials, installing the back roof, washing down the walls, and painting. Subsequently, they return to the construction site and continue working in the same manner until we reach a satisfactory stage." Mr. Smith clarified during the re-examination that he intended to convey the sentiment "well done...operating back the store" when he said "till we reach a good stage." Additionally, Mr. Phipps provided evidence that Mr. Smith was responsible for the repairs and renovations to the property, ensuring that business operations could continue following the fire. Phipps also claimed that he personally "contributed to the cleanup of the area."

[142] Mr. Smith completed the complete restoration of the property in or around 2001. Subsequently, he began leasing portions of the premises to a variety of tenants, such as Calvin James, Charmaine Pennant, Mr. Basu, and Mr. McGowan. Additionally, Mr. Smith has furnished the Court with receipts as evidence of these rental arrangements. Mr. Phipps also provided evidence that Mr. Smith did indeed rent sections of the subject property to various tenants. He was able to identify Mr. Basu and Mr. McGowan as two of those tenants.

[143] Mr. McGowan has provided evidence that the subject property was in a deplorable state and that no business was operating there when he entered into his tenancy.

According to Mr. McGowan's testimony, the subject property was plagued by rats and rodents, had an abundance of garbage, and lacked a ceiling. Mr. Smith categorically rejected the suggestion when it was presented to him during cross-examination. It is contended that a prudent businessman would not have been interested in occupying a space that was in such a state of disrepair, with rats and rodents, garbage strewn about, and no ceiling. Additionally, the Court is being requested to disregard Mr. McGowan's testimony that pest control personnel were required.

[144] During cross-examination by Counsel for Mr. McGowan, Mr. Smith provided testimony regarding his hands-on approach to the business and his assurance that the business would not be closed in the event of his illness or absence. This testimony was uncontested, indicating that the business was indeed operational at the time Mr. McGowan began his tenancy at the subject property. Mr. Phipps provided evidence under cross-examination and amplification to substantiate Mr. Smith's assertion that work was indeed underway at the subject property at the time Mr. McGowan began his tenancy.

[145] Consequently, it was argued that Mr. Smith, his tenants, and other occupiers would not be able to operate in a space that was infested with rats, rodents, and garbage if business were being conducted at the subject property. Mr. Phipps replied, "No sensible man would not rent it," when counsel for Mr. McGowan informed him that the subject property was strewn with garbage when McGowan visited. He also denied that there were rodent droppings, termites, and damage to the back door. Mr. Phipps staunchly denied that Mr. McGowan cleaned the premises, as there was nothing to clean.

[146] In recounting the evidence, Counsel argued that the fact that the section of the property rented to Mr. McGowan was in good tenantable repair was further unchallenged evidence. Counsel for Mr McGowan solidified a line of questioning that spoke to a wholesale operation by Errol Jarrett at the subject property. Mr. McGowan occupied the space in which the wholesale was being operated subsequent to Mr. Jarrett's business being discontinued.

[147] Additionally, counsel submits that, Mr. McGowan, Mr. Smith, and Mr. Phipps provided additional evidence that businesses were in operation at the subject property when he began his tenancy. Mr. McGowan stated that Lascelles Bennett was operating a cane juice stall on the premises, and Mr. McGowan also stated that Paul Pitter was operating a cabinetry business for himself at the subject property. Mr. McGowan also observed individuals 'come and go'.

[148] It is argued by Counsel that the evidence presented by Mr. McGowan that the subject property was in a deplorable state and no business was being operated there when he began his tenancy in 2007 should be rejected as fabricated, particularly in light of the fact that he has not provided any evidence of the alleged repairs and "extensive clean-up" work that were carried out in 2007, and he has provided conflicting evidence regarding the businesses being operated at the subject property.

[149] It is contended that the subject was in good condition when Mr. McGowan began his tenancy, as indicated by Mr. Smith's evidence. Mr. Smith clarified that the repairs made to the premises by Mr. McGowan were merely to establish the interior of the property in accordance with his preferences. Mr. Smith has not denied that Mr. McGowan did, in fact, perform work on the section of the property that he occupied and elsewhere; however, this work was conducted without his (Mr. Smith's) approval or consent.

[150] It was suggested to Mr. McGowan that the renovations he made to the subject property were not a necessity, but rather a personal preference for his business operations. This included the installation of glass windows, a metal door, and two (2) bathrooms, as well as the replacement of tiles. Mr. McGowan provided evidence during cross-examination that he was a tenant of Mr. Smith, rented a specific section of the subject property from Mr. Smith, and was expected to operate within the rented space. He was also answerable to Mr. Smith as the landlord.

[151] Mr. McGowan was granted permission by Mr. Smith to deposit only one 40-foot container on the premises as a tenant. However, he proceeded to deposit two additional containers, construct a warehouse for inventory storage, pave a section at the rear of the

property to accommodate large PVC inventory, construct a workshop, construct a guardhouse, and demolish outbuildings that he observed on the property at the beginning of his tenancy.

[152] Nevertheless, Mr. McGowan proceeded as he wished, disregarding Mr. Smith's authority as the property owner, despite Mr. Smith's refusal to grant him permission to expand to areas of the property that were not rented to him. It is alleged that Mr. McGowan neglected to consult with or obtain Mr. Smith's consent for substantial work that he performed on the subject property.

[153] Mr McGowan has also provided evidence that he was responsible for the legal electricity and water supply to the premises. Mr Smith has vehemently denied these allegations and stated that there was '...legal light and everything'. In his witness statement filed on 23 August 2019, paragraph 11, Mr McGowan suggested that he '...had the property wired for electricity and applied for a meter' when he commenced tenancy at the subject property. However, he then contradicted himself in paragraph 28 : It is argued that the Court should disregard Mr. McGowan's claim that he was responsible for installing legal electricity on the premises and instead acknowledge that the property was equipped with legal electricity at the time of his tenancy.

[154] Mr. McGowan provided evidence that he purchased a water tank, purchased water, and installed a pump at the subject property when he began his tenancy. Mr. McGowan was advised that legal water was being supplied to the premises; however, he elected not to utilise the legal water connection and instead made the personal decision to obtain water from another source. It was also suggested to Mr. McGowan that the water supply at the subject property was disconnected as a consequence of his actions when he damaged the pipes.

[155] Counsel submits that Mr. McGowan has played a significant role in the dishonest fabrication of a well-crafted narrative regarding the condition of the premises in order to substantiate his desire to acquire the subject property at a substantial discount from its market value. The submission is that Mr. McGowan's repressive attitude was further

exacerbated by his friendship with Mr. Lascelles Bennett, during which time he obtained contact information for Ms. Miranda. Ms. Miranda informed Mr. McGowan that Mr. Smith was not the registered proprietor of the subject property. It is contended that Mr. McGowan's intention in establishing a friendship with Mr. Bennett was to exclude Mr. Smith from the process, as he was aware of Mr. Bennett's intention to exploit Mr. Smith by attempting to acquire the property for his own benefit and use.

[156] Mr. McGowan's demeanour was allegedly exacerbated by his belief that he had acquired the subject property from an unauthorised beneficiary of Monica Gordon's estate. Mr. McGowan initiated violent actions against Mr. Smith and Mr. Smith's tenants in order to compel them to vacate the premises. He believed that this was a form of "recovery of possession."

[157] Mr. Smith provided evidence to support his claim that Mr. McGowan had a "*style of bringing man from Fletcher's Land...bare badwud dem cuss.*" Additionally, Mr. Basu has provided evidence that Mr. McGowan has threatened him (Mr. Basu) and has brought men into his place of business with the intention of intimidating him (Mr. Basu), his staff, and customers. Mr. Basu has also provided evidence that these men have entered his place of business brandishing guns and knives.

[158] Mr. Smith's evidence indicates that when Mr. McGowan declared himself the owner of the Slipe Road property and requested that all occupants vacate, he removed all of Mr. Smith's work machines in order to disrupt Mr. Smith's business operations. This action has continued to have an impact on Mr. Smith. Consequently, when Mr. McGowan stated that he could not be affecting Mr. Smith at this time, Mr. Smith remains affected. It is submitted that Mr. McGowan's assertion that Mr. Smith has no business operating at the subject property is inaccurate, as Mr. Basu is currently a tenant at the subject property and pays rent to Mr. Smith on a monthly basis.

[159] Mr. McGowan has admitted that he did not serve Mr. Smith with a Notice to Quit when he took steps to "recover possession" of the subject property. He claimed that he was unable to do so because he did not see Mr. Smith. When asked in cross examination,

"Can a tenant serve a Notice to Quit on a landlord and request that the landlord vacate the premises?" Mr. McGowan definitively said "No".

[160] It is argued that Mr. McGowan's failure to serve Mr. Smith with a Notice to Quit was not due to his lack of awareness of Mr. Smith, but rather because Mr. McGowan, a tenant, lacks the authority to serve a landlord with a Notice to Quit requiring Mr. Smith to surrender the premises to Mr. McGowan. It is further contended that Mr. McGowan will take any legal or illegal action necessary to obtain possession of the subject property.

[161] Another instance in which Mr. McGowan's credibility should be called into question is when he agreed with counsel for Mr. Smith during cross examination that Winston Smith offered to rent him only one section of the building at all material times. Mr. McGowan then contradicted himself during the same line of cross examination by stating that Mr. Smith offered to rent him the entire premises for One Hundred and Fifty Thousand Dollars (\$150,000.00).

[162] It is alleged that Mr. Smith offered to rent Mr. McGowan only one section of the subject property at all material times. Both Mr. Basu and Mr. McGowan have provided evidence that they have been paying rent to Mr. Smith for the use and occupation of the subject property.

[163] Mr. Basu has provided evidence that he has been aware of Mr. Smith's ownership of the subject property since entering into a lease agreement with him in or around 2008. Mr. Basu continues to acknowledge Mr. Smith as his landlord and pays Mr. Smith rent in accordance with the terms of the lease agreement. Mr. Basu operates a business at the subject property that sells electronics and furniture.

[164] Mr. McGowan has served a Notice to Quit on Mr. Basu. Despite this, Mr. Basu has refused to comply with the Notice to Quit, which was served on him by a servant or agent of Mr. McGowan. Mr. Basu has provided evidence that Mr. McGowan lacks the authority to remove anyone from the subject property, as Mr. Smith is the owner.

[165] Mr. McGowan has provided evidence that he never paid rent to Mr. Smith as the owner of the subject property, but rather in the capacity of an agent. It was suggested to Mr. McGowan that Mr. Smith never represented to him (Mr. McGowan) that he was acting as an agent of anyone at the subject property, as he (Mr. Smith) always operated as the owner of the premises.

[166] Additionally, when asked whether he sought proof from Mr. Smith of the alleged agency arrangement, Mr. McGowan responded, "no." It is argued that Mr. McGowan did not request any proof of this nature from Mr. Smith because Mr. Smith did not disclose that he was an agent. It is further argued that Mr. McGowan's evidence that Mr. Smith was an agent should be disregarded on the basis that Mr. McGowan has a conflict of interest with Mr. Smith in order to acquire the property and will provide evidence to support his own agenda.

[167] Counsel invited the Court to consider the level of distress and agitation that Mr. Smith experienced when it was suggested that he act as agent for the beneficiaries of Monica's Gordon Estate. Mr. Smith maintained that he is the owner of the subject property from the outset of the suit and during his testimony in the witness box. It is submitted that Mr. Smith never considered himself or acted as an agent for anyone in relation to the subject property, and he was unequivocal about this throughout the trial.

[168] Counsel recounted that Ms. Sharon Gordon responded categorically, "Not for me," when asked by Mr. Smith's counsel whether Mr. Smith was an agent. Counsel asserted that the court should also consider Ms. Miranda's desire for the Court to believe that an individual she regards as an alleged scammer acted as an agent on her behalf. This assertion is absurd. Additionally, there was no evidence presented to the Court regarding Mr. Smith's involvement in scamming, and Mr. Smith has denied any involvement in such activities.

[169] Ms. Miranda and Sharon Gordon have both testified that Mr. Smith was acting as an agent for the family in relation to the subject property. However, they were unable to provide the Court with any evidence to support the existence of such a relationship;

therefore, this piece of evidence should be rejected by the Court. Mr. Smith stated that he collected rent at the property for himself and was unaware of any of Monica Gordon's children collecting rent from the occupants. He clarified that this was not a case in which Monica's children collected rent without his knowledge; he stated that this "...couldn't happen."

[170] Additionally, Ms. Miranda and Sharon Gordon have provided evidence that they had other agents acting on their behalf, including David Gordon, Kevin Marsh, Uncle Raymond, and Uncle Raymond's brother. However, they were unable to provide any evidence that these relationships actually existed. Mr. Phipps has been on the premises for over thirty years and has never observed any of these individuals acting as agents, which is further evidence that no agency agreement existed between anyone and the beneficiaries of Monica Gordon's Estate.

[171] It is suggested that the Court accept the assertion that Ms. Miranda and Sharon Gordon had no one acting on their behalf in relation to dealings at the subject property. This assertion is unsubstantiated by the lack of evidence to substantiate it, given the numerous agents they claim to have had over the years. Mr. Smith provided evidence that he had no involvement with the children in relation to rent at the subject property. He also stated that he never paid a dollar to [him] to obtain the premises. Mr. Smith was adamant that he was the owner of the premises and, as such, would not be obligated to pay rent to anyone.

[172] Sharon Gordon and Ms. Miranda presented evidence that Winston Smith was their mother's tenant. They claimed that the evidence was challenged on the basis that Mr. Smith was Keith Gordon's business partner, which would preclude him from being a tenant at the subject property. Ms. Miranda concurred with the evidence presented to her, which was that Winston Smith was Mr. Keith Gordon's business partner rather than his tenant. She stated, "*If you wish to phrase it that way.*"

[173] Ms. Miranda claimed to be extremely close to her mother during cross-examination by Counsel for Mr. Smith. However, she also stated that her mother would not disclose

the activities of her business to her. This purportedly intimate relationship, which is predicated on the latter statement made by Ms. Miranda, is uncertain. Additionally, neither Sharon Gordon nor Ms. Miranda presented any evidence to the Court to support their claim that Mr. Smith paid rent to her mother.

[174] Additionally, the Court should consider Mr. Smith's uncontested testimony that Monica Gordon "*does not discuss business.*" Therefore, how could she have been involved in the rent collection at a property with which she had no prior interactions? In light of the absence of evidence indicating that Mr. Smith was a tenant of the subject property, it is argued that the Court should disregard this evidence and focus on the fact that Mr. Smith has provided the Court with ample evidence that he acted as the owner of the subject property at all material times prior to and subsequent to the deaths of Keith and Monica Gordon.

[175] The beneficiaries of Monica Gordon's Estate abandoned the subject property and did not engage in any transactions with it for a period exceeding thirty (30) years. The beneficiaries of Monica Gordon's Estate, Ms. Miranda and Sharon Gordon, have provided evidence that supports the Claimant's claim that the beneficiaries of the Estate absconded from Jamaica and, as a result, abandoned the subject property.

[176] Sharon Gordon has stated in her December 5, 2012, Affidavit that her family has been plagued by significant tragedy and violence since 1986, when her father was murdered, and since 1988, when her brother and mother were murdered. Sharon Gordon stated in the aforementioned affidavit that the surviving family members migrated to the United States of America and rarely visited Jamaica, only doing so under the cover of secrecy and heightened security. Consequently, the reason for the presence of agents was the grave danger.

[177] Sharon Gordon acknowledged that the family would refrain from visiting Jamaica for an extended period of time during cross-examination. According to Sharon Gordon in paragraph 5, of her Affidavit dated December 5, 2012, the family's unique circumstances rendered them incapable of "*effectively managing the [subject property] and protecting*

against the accrual of adverse rights." This statement confirms that the beneficiaries have relinquished all interests in the subject property to Mr. Smith, who has accrued adverse rights as the owner, as a result of their inability to control the property.

[178] It is contended that the family abandoned the subject property following Monica Gordon's death and has not conducted any business with it since then. Mr. Smith was granted complete authority over the property in question as a result of this legislation. In excess of three decades, Mr. Smith has maintained exclusive, open, undisturbed, undisputed, and continuous possession and occupation of the subject property, exercising all ownership rights to the exclusion of all others.

[179] Ms. Miranda and Sharon Gordon have both provided evidence that they never maintained the property or performed any repairs. Sharon Gordon admitted that she did not maintain the premises during the cross-examination, stating that "*Mr. Smith repaired*" because she was not present. This evidence was further substantiated by Mr. McGowan's testimony during cross-examination, in which he acknowledged that Ms. Miranda failed to maintain the premises, engage with tenants, or guarantee that the location was in good condition.

[180] Ms. Miranda and Sharon Gordon provided evidence that Mr. Smith was responsible for the fire that occurred in or around 1999; however, the fire report (Exhibit 45) indicated that the cause of the fire was unknown. Furthermore, Sharon Gordon and Ms. Miranda both provided evidence that they did not undertake any renovations to the property after the fire, as Mr. Smith's insurance proceeds were utilised to make the requisite repairs.

[181] Mr. Smith provided uncontested evidence in amplification that his personal funds were utilised to repair the building following the fire. He specifically identified the source of these funds as bank deposits. Additionally, the Court should consider the fire report (Exhibit 45), which provides the insurance information as 'not applicable' and 'not ascertainable', in order to refute the claims made by both Ms. Miranda and Sharon Gordon that Mr. Smith's insurance proceeds were used to repair the buildings.

[182] Sharon Gordon and Ms. Miranda have failed to submit evidence to the Court to support their claims. This piece of evidence, as presented by Sharon Gordon and Ms. Miranda Gordon, should be rejected and should also serve as testimony to their lack of knowledge regarding the events at the subject property. Mr. Smith has submitted evidence to the Court that he has been paying property taxes on the premises. Ms. Miranda provided evidence that property taxes were paid in a timely manner during cross-examination by Counsel for Mr. McGowan. However, she was unable to provide any evidence to substantiate her claim. It is argued that Ms. Miranda was unable to ascertain whether the property taxes for the subject property were paid in a timely manner, as she never paid any taxes of this nature in relation to the premises. It was also evident that Ms. Miranda was not being truthful regarding the timely payment of taxes, as exhibits 2A — 2D indicated that taxes were still outstanding.

[183] Ms. Miranda and Sharon Gordon assert that the subject property is occupied by tenants, but they both acknowledged that tenancy agreements were non-existent. Sharon Gordon could only identify Mr. McGowan and Mr. Basu when asked about the names of tenants who occupied the property. Additionally, she was unable to provide information regarding the rent that these tenants paid. Sharon Gordon's capacity to appoint Mr. Basu and Mr. McGowan as tenants is attributable to her comprehension of the court procedure. Sharon Gordon was also unaware of whether tenants occupied the property between 1998 and 2011. This was demonstrated during her cross-examination by the Counsel for Mr. Basu. Sharon Gordon stated that she was unaware of the individuals present from 1998 to 2011.

[184] It is argued that Sharon Gordon's lack of knowledge regarding the tenants of the property, as both Mr. Basu and Mr. McGowan would have been occupants since 2007 and 2008, respectively, Counsel contends, is further evidence that she is not knowledgeable about these tenants and could have named them as a result of her knowledge of the instant matter. In relation to Ms. Miranda and her knowledge of the tenants at the property, it is argued that she named Mr. Basu and Mr. McGowan based on her knowledge of the proceedings. Additionally, Ms. Miranda names other family members as tenants, who were mentioned for the first time during her testimony.

[185] Counsel maintained that Ms. Miranda has failed to provide any evidence to the Court regarding any of the other arrangements with "family tenants" who occupied the subject property. Consequently, Counsel requested that the Court reject Miss Miranda's testimony regarding her family members being tenants of the subject property. Sharon Gordon acknowledged that she was indeed absent from Jamaica from 1995 to 2012 during cross-examination by counsel for Mr. McGowan. She also acknowledged that she was unable to contest the improvements made to the subject property by Mr. McGowan because she was *"not in the country [Jamaica]."*

[186] Additionally, counsel argued, that Sharon Gordon's witness statement, which was filed on July 31, 2019, provides additional evidence that she was unaware of the events at the subject property. In the statement, she stated that she was unaware that Mr. Smith was renting the premises to Mr. Basu and that Mr. Smith was renting the premises as landlord. Sharon Gordon also stated that Mr. Smith was supposed to have vacated the premises due to his diabetes. Had she been informed of the events at the subject property, she would have been aware that Mr. Smith has been in control of the subject property for more than thirty (30) years. Additionally, she provided evidence under cross examination, stating that she was *"...not aware Basu was there"* and that she believed the property was unoccupied and unrented when Mr. Smith departed.

[187] It is argued by Counsel that the beneficiaries of the estate were only made aware of the events at the subject property when Mr. McGowan contacted Ms. Miranda in 2011 and made an offer to purchase the property. Mr. Smith's rights as adverse possessor began to accrue during the period preceding this engagement, during which the beneficiaries abandoned the subject property for more than thirty (30) years. Counsel maintained that since 1988, Mr. Smith has maintained physical possession of the Slipe Road property and has conducted business as a legitimate owner, excluding all others. It is argued that Mr. Smith's acts of possession in order to establish "Adverse Possession" in relation to the aforementioned property are consistent with the guidance provided by Graham-Perkins JA. in **Farrington**.

[188] It is maintained by Counsel that Mr. Winston Smith has maintained undisturbed, unmolested possession of 77^{1/2} Slipe Road, Kingston 5, in the parish of Saint Andrew, since 1988, to the exclusion of all beneficiaries of Monica Gordon's Estate. Mr. Smith has exercised all the rights of ownership in relation to the property, which is registered at Volume 535 Folio 4 of the Register Book of Titles. Mr. Winston Smith is therefore entitled to be registered as the proprietor of the aforementioned subject property in accordance with section 85 of the Registration of Titles Act.

[189] Counsel asserts that Mr. Smith has indeed demonstrated that he has acquired the title of the subject property through adverse possession on a balance of probabilities. Mr. McGowan is responsible for paying Mr. Smith rent for the use and occupation of the subject property since October 2011. According to Section 4 of the **Rent Restriction Act**, the Landlord and Tenant are considered to have incorporated the covenant outlined in the First Schedule into any tenancy agreement or lease executed after November 1979 and are obligated to adhere to its terms.

[190] Section 25 of the **Rent Restriction Act** grants a landlord the authority to serve a Notice to Quit on a tenant and specifies the circumstances under which such a Notice to Quit may be issued. These circumstances encompass, but are not restricted to, the tenant's failure to pay rent within the designated timeframe and the violation of express or implied provisions in the tenancy agreement.

[191] In or around 2006, Mr. Winston Smith entered into a tenancy agreement with Mr. Mr. McGowan to rent a section of the Slipe Road property. The agreement stipulated that Mr. McGowan would pay Mr. Winston Smith a monthly rent of Forty Thousand Dollars (\$40,000.00) in exchange for the leased premises. Mr. McGowan McGowan's monthly rent was increased to Fifty Thousand Dollars (\$50,000.00) in or around February 2010. Rent was paid by Mr. McGowan in accordance with the agreed-upon amount until October 2011.

[192] Mr. McGowan has violated the tenancy agreement by failing to pay rent in the amount of Fifty Thousand Dollars (\$50,000.00) per month for the section of the Slipe

Road premises that he has occupied since October 1, 2011. Mr. McGowan is not the owner of the subject property, as the purported sale of the premises to him is null and void. He does not possess a registered title to the subject property, and he remains Mr. Smith's tenant as a result of a tenancy agreement from 2007. Currently, Mr. McGowan occupies a portion of the subject property and operates a business without paying rent.

[193] Consequently, counsel argued that Mr. Winston Smith is entitled to recover rent from Mr. Mr. McGowan in the amount of Five Million Nine Hundred and Fifty Thousand Dollars (\$4,950,000.00) in unpaid rent to date, which will continue at a rate of Fifty Thousand Dollars (\$50,000.00) per month for his use and occupation of the subject property. Mr. McGowan has also violated the tenancy agreement in relation to the covenants outlined in the Rent Restriction Act by engaging in conduct that is a nuisance and annoying to adjoining occupiers, causing damage to the property, preventing the landlord and/or his servants and/or agents from entering the section of the premises that he, Mr. McGowan, occupies, and subletting premises without Mr. Smith's consent.

[194] In or around January 2012, Mr. Winston Smith personally served a Notice to Quit on Mr. McGowan to relinquish possession of the property as a consequence of Mr. McGowan's failure to comply with the tenancy agreement covenants. Mr. McGowan has yet to vacate and deliver the premises. The purported sale of the subject property by Ms. Miranda to Mr. McGowan is null and void.

[195] Counsel contended that Ms. Miranda did not possess the authority to sell the Slipe Road property at the time she executed a Deed of Conveyance on June 30, 2011. Monica Gordon, the registered proprietor, passed away without a will at the time of the purported sale, rendering Ms. Miranda incapable of disposing of the property. No one was appointed to administer the Estate, and no Grant of Letters of Administration was applied for to address the Estate.

[196] Additionally, Miss Miranda was not granted written authorisation to act in this capacity by any other beneficiary of the Estate. Sharon Gordon, a witness and a beneficiary of the Estate, categorically denied that she had provided any consent for the

property's sale. Sharon Gordon also categorically denied that her subsequent approval of her sister Ms. Miranda's appointment as Administrator of Monica Gordon's Estate was ever intended to facilitate the sale of the subject property to Mr. McGowan.

[197] Sharon Gordon acknowledged during cross-examination that her relationship with her sister, Ms. Miranda, was strained, and that this was due to the manner in which Miranda was "*...managing [her] mother's Estate in general.*" Sharon Gordon stated that the relationship between her sister, Ms. Miranda, was positive before 2011. This coincided with the time when Ms. Miranda entered into an agreement to sell the subject property to Mr. McGowan without the consent of the beneficiaries of Monica Gordon's estate. Sharon Gordon also acknowledged during cross-examination that Ms. Miranda was not authorised to sell the subject property and that "*she [Ms. Miranda] was not administrator] ...*" of Monica Gordon's Estate.

[198] It is contended that the evidence of Sharon Gordon's opposition to Mr. McGowan's acquisition of the property from the outset serves as confirmation that no consent was granted for the sale of the land as a beneficiary of Monica Gordon's estate. Sharon Gordon has been adamant in her position since 2011 to present that she not selling the subject property to Mr. McGowan as a beneficiary of Monica Gordon's Estate.

[199] It is argued that Mr. McGowan's payment of substantial sums to Sharon Gordon for actions he purportedly claimed were under duress was a tactic to sway Sharon Gordon to his side, as he was aware that Sharon Gordon was opposed to his acquisition of the property. Sharon Gordon has vehemently denied that she would compel Mr. McGowan to pay her money, asserting that she is a person of means due to the means of her current husband and, as a result, would not require anything from him.

[200] Counsel asserts that Ms. Miranda acknowledged that the subsequent act of properly applying for a Grant of Letters of Administration in the Estate of Monica Gordon (granted on the 17th day of October 2013) was never intended to aid in the process of selling the property to Mr. McGowan. Additionally, Miss. did not execute any transfers. Ms. Miranda in relation to the purported sale.

[201] The validity of the Deed of Conveyance is further called into question by the fact that Ms. Miranda's Statutory Declaration, which was notarised on June 24, 2011, in paragraph 4, states that she *"...continued in possession of the aforementioned property until I sold it by Deed of Conveyance to Mr. McGowan on June 30, 2011."* It was argued that it is highly inappropriate for Ms. Miranda to execute the Statutory Declaration on June 24, 2011, and subsequently swear to sell the property to Mr. McGowan on a date that is after the date of the Declaration's execution.

[202] Counsel maintained that Mr. McGowan was unable to acquire legal and/or beneficial ownership of the subject property as a result of the aforementioned. Counsel argued that Mr. McGowan should not be accepted as a witness of the truth, as he has provided conflicting evidence regarding his knowledge of the subject property being registered or not. Mr. McGowan stated in paragraph 2 of his affidavit, which was filed on July 18, 2012, that he was aware that the land was unregistered when he entered into an agreement with Ms. Miranda to purchase the subject property. Consequently, an instrument of conveyance was executed with the consent of the beneficiaries of Monica Gordon's Estate. In paragraph 3 of the aforementioned Affidavit, which was filed on July 18, 2012, Mr. McGowan disclosed that the subject property was registered while conducting a survey of the land in anticipation of an application for registration under the Registration of Titles Act. Mr. McGowan has blatantly contradicted himself in paragraph 3 by asserting that Ms. Miranda has consistently maintained that her mother had a title to the property. How can Mr. McGowan claim that he was unaware that the land had been registered?

[203] Counsel contends that Mr. McGowan and Ms. Miranda were knowingly aware of the subject property's registration at all relevant times. However, they attempted to unreasonably sell the property through inappropriate means in order to erode Mr. Smith's rights. Counsel asserts that by virtue of the actions of Mr. McGowan and Ms. Miranda, the court should evaluate the character of these witnesses and the extent to which they will go to ensure that the property is disposed of by any viable means.

Submissions for Vernon McGowan

[204] According to the submissions for Mr. McGowan, in the absence of the agreed facts, his and the perspectives of Mr. Smith and Mr. Basu, are diametrically opposed. Mr. McGowan asserts that Mr. Smith had consistently identified himself as the property's agent prior to June 30, 2011, and that he acquired the entire interest in the subject property from Ms. Miranda, the eldest daughter of Monica Gordon, through a deed of conveyance dated June 30, 2011. Since that time, Ms. Miranda has served as the estate's administrator. The sole justification for the land's sale by deed was that, at the time of the transaction, a search of the records at the National Land Agency using the volume and folio numbers provided by Ms. Miranda did not produce any results and the parties consequently engaged in the sale of the subject property as unregistered land.

[205] Mr. McGowan argues that the sale of the interest of Monica Gordon's estate in the subject property was validly executed, and that he is legally and beneficially entitled to the property in the grand scheme of things, based on the course of dealings and the principle of relation back. Mr. McGowan filed an ancillary claim against Ms. Miranda on November 6, 2015, following the suits brought by Mr. Smith and Mr. Basu. Counsel contends that it is undeniable that Mr. McGowan and Mr. Basu both acknowledge that Mr. McGowan initially acquired a portion of the subject property through rental. Mr. McGowan served Mr. Basu with a Notice to Quit and to relinquish possession of the subject property.

[206] It was submitted for Mr. McGowan that the following are the issues that the Court would be required to evaluate:

- *Is it true that Vernon violated the tenancy agreement between him and Winston, as has been suggested?*
- *Whether Vernon had acquired the subject property with the knowledge that Winston had a legal or equitable interest in the land.*
- *Whether Vernon has committed any acts of violence, intimidation, or harassment against Kinkar, his staff, or customers, as has been alleged?*

- *Kinkar has sustained substantial economic losses, particularly in the form of loss of \$20,000,000.*

[207] It was submitted for Mr. McGowan that the following are the legal issues:

- *Is Mr. McGowan entitled to possession of the subject property through adverse possession and is this ownership established in accordance with section 85 of the Registration of Titles Act?*
- *By extension, is Mr. McGowan entitled to the recovery of possession and outstanding rental, as is being sought?*
- *Whether Mr. Basu is "a legal occupier" of the subject property, as is purported?*
- *Is Mr. Basu entitled to claim damages for trespass and loss of income in the amount that has been alleged?*
- *Is it possible for Mr. McGowan to establish that the sale of the subject property resulted in a legally binding contract with the estate of Monica Gordon, as a result of the "relation back" principle?*
- *Whether Ms. Miranda, in her capacity as an eventual Administrator of Monica Gordon's estate, had executed a valid and binding contract on behalf of the estate prior to assuming her role under the Grant of Administration.*
- *Did the estate of Monica Gordon benefit from the sale of the subject property by Ms. Miranda to Mr. McGowan?*
- *Whether Ms. Miranda ratified or consented to the sale of the subject property to Vernon after obtaining the Grant of Administration in the estate of Monica Gordon.*
- *Conversely, whether Mr. McGowan is entitled to recover the purchase price.*

- *Additionally, and/or alternatively, whether M is ens. McGowan is entitled to recover damages for unjust enrichment, and if so, for what period and at what rate?*

[208] The question is asked by Counsel for Mr. McGowan, whether Mr. Smith is entitled to possession of the subject property through adverse possession and is this ownership established in accordance with section 85 of the Registration of Titles Act? It was contended that Mr. McGowan and Ms. Miranda's claim would be rendered null and void if the Court determines that Mr. Smith has acquired title to the subject property through adverse possession. Counsel argued relying on the authority of **Recreational Holdings Limited v Lazarus** [2016] UKPC 22, in which the Board of the Privy Council determined that a *bona fide* purchaser of land for its value acquired it subject to unregistered rights acquired by adverse possession that had accrued or were presumably in the process of accruing prior to the registration of the purchaser's title.

[209] Additionally, counsel argued, any equitable rights that Monica Gordon's estate would inherit would be rendered null and void by the Limitations of Actions Act ("Limitation Act"), specifically sections 3 and 30. However, it is insufficient to merely purport to be an owner and derive adverse possession, it was submitted. In **Kenneth Blaine vs. Junior Diggs-White & Ighet Diggs-White** [2016] JMSC Civ. 162, where Tie, J (Ag), as she was then, underscored the principle while reiterating the well-known judgement of **Farrington**, which demonstrates that it involves actual physical possession and the presence of a particular mental element.

[210] It was claimed for Mr. McGowan that both he and Mr. Basu admit that when he entered the property first, it was by lease. It is also not disputed that he served Mr. Basu. In response to Mr. Smith's claim, Mr. McGowan claims that prior to June 30, 2011, Mr. Smith had always held himself out as the property's agent, and that he purchased the entire interest in the subject property from Marva Miranda, Monica Gordon's eldest daughter, who has since become the Administratrix of the said estate.

[211] He contends that the only reason the land was sold by deed was because a search of the records at the National Land Agency using the volume and folio numbers provided by Marva yielded no results. As a result, the parties completed the sale of the subject property as unregistered land. Based on the course of dealings and the principle of relation back, Mr. McGowan declares that the sale of Monica Gordon's estate interest in the subject property was validly executed; and that, in the grand scheme of things, he is legally and beneficially entitled to the subject property.

[212] On the issue of whether Mr. Smith is the owner of the subject property through adverse possession and is entitled to possession under Section 85 of the Registration of Titles Act, it is argued that if the Court finds that he acquired title to the subject property through adverse possession, the title of Mr. McGowan and Ms. Miranda would be defeated. As already referenced, the case of **Recreational Holdings Limited v Lazarus**, and the relevant provisions of the Limitations of Actions Act, and the decision of this Court in **Kenneth Blaine v. White** are applicable.

[213] It was submitted that the credibility of Mr. Smith should be the primary focus of the court's decision-making process, as he bears the burden of proving his claim on a balance of probabilities. To that end, it was asserted that there is insufficient evidence to support his claim of acquiring title to the property through adverse possession, despite his clear occupation and confirmation by Ms. Sharon Gordon.

[214] According to Mr. Smith's witness statement, his occupation began at the subject property when he was "placed in possession of property" by the registered proprietors, Keith and Monica Gordon. He claimed to be in "open and undisturbed possession" of the property after Keith's death, which is supported by the fact that Monica Gordon has the right of survivorship. Sharon Gordon, Ms. Miranda's sister and supporting witness, mentioned in her witness statement that when she returned to Jamaica after her father's death, she saw their mother collecting rent and Mr. Smith was paying it. Marva also confirmed this in her statement.

[215] After Monica Gordon's death, it was argued that the credibility issues arise and that his claim of adverse possession is not supported by evidence. Counsel submitted that he did not perform acts of adverse possession until 2008, when he subleased premises to Mr. Basu, therefore placing his claim below the 12-year statutory requirement of the Statute of Limitations of Actions. Counsel invited the Court to consider the evidence of Ms. Miranda and Sharon Gordon that after their mother's death, they and their brother David collected rental either personally or through authorized estate agents and should accept that Mr. Smith acted as an agent for the beneficiaries of Monica Gordon's estate at their request.

[216] In his Defence of Mr. Smith's claim, Mr. McGowan raised the principle of agency, which it was submitted, has not been addressed or denied. It was asserted that Mr. Smith acted as agent until 2008, as evidenced by Mr. McGowan conversation with Ms. Miranda, who stated she would sell the property because she and her siblings were not making much money from it. Mr. McGowan evidence suggests that Mr. Smith may have acted on behalf of Ms. Miranda and Ms. Gordon while they were overseas, in addition to Sharon's baby father, Kevin Marsh. However, it is submitted, there is no proof that Winston signed the receipts.

[217] Relying on the case of **Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd** [1964] 2 QB 480, per Diplock LJ, 10, it counsel submits that Mr. Smith entered into the lease agreement with Mr. McGowan with the permission or knowledge of Monica Gordon's estate beneficiaries.

"An 'actual' authority is a legal relationship between principal and agent created by a consensual agreement to which they alone are parties. Its scope is to be ascertained by applying ordinary principles of construction of contracts, including any proper implications from the express words used, the usages of the trade, or the course of business between the parties. To this agreement the contractor is a stranger; he may be totally ignorant of the existence of any authority on the part of the agent. Nevertheless, if the agent does enter into a contract pursuant to the 'actual' authority, it does create contractual rights and liabilities between the principal and the contractor."

[218] This position, it is argued, is bolstered by the fact that neither Ms. Miranda nor Ms. Gordon denied having knowledge of the said lease agreement. It was submitted that it

stood to reason that up to 2008, Mr. Smith would have been authorized to collect rent and/or enter into rental agreements on behalf of Monica's estate beneficiaries and that when he stated that *"in or around 2002, I entered into lease agreements with several persons to occupy sections of the Slipe Road property,"* that those contracts were entered into with the permission of Monica Gordon's estate beneficiaries. Both Ms. Miranda and Ms. Gordon testified that they were collecting rent around that time.

[219] Mr. Smith in his witness statement, also mentioned paying property taxes, maintaining the premises, and making repairs, but it was submitted, relying on the principles laid out in **Kenneth Blaine vs. White**, that to satisfy the principle of adverse possession, actual acts of ownership must be carefully itemized and identified. It was therefore suggested that as a result, Mr. Smith's mention of maintaining and effecting repairs alone is insufficient to establish adverse possession.

[220] In the alternative, Counsel argued, if the Court is inclined to find that Mr. Smith made repairs to the subject property and maintained them, it was argued that his efforts should be limited to his rented portion of the property, from which he operated his business prior to the property's destruction by fire. This is a position that they contend is supported by evidence of Mr. McGowan, who has stated the following in relation to his first visit to the premises:

"there was obvious fire damage to the main building of the property (something which I had observed many times before whilst passing the property). There was a lot of rodents, garbage and insects in the main building. On the upstairs section, the ceiling was burnt out completely and the windows were all broken. Some sections of the roof had been completely burnt out, so much so, that I could see the sky through certain sections. I observed a gentleman, whose name I later learnt is Paul Pitter, doing cabinetry work there and I also saw evidence that he lived on the premises. On the downstairs section of the main building, there was also obvious fire damage but not as bad as upstairs. On the outside, there were wide cracks in the concrete. There were no windows and doors on the downstairs section but there was a metal shutter to the section of the building fronting on Slipe Road. The metal shutter was still intact"

[221] In light of Mr. McGowan's description, it is submitted that Mr. Smith's claim of significant renovations to the building, which were fully restored around 2001, be rejected in the absence of any physical or detailed proof to support his claim. The Court was invited to accept that the subject property was renovated by Mr. McGowan after he took

possession under the lease agreement and began effecting repairs, as detailed in his witness statement. It was submitted that these improvements to the property enabled Mr. Smith to enter into lease agreements with tenants like Mr. Basu, who arrived in 2008.

[222] Ronald Phipps' evidence, it is submitted, supports Mr. McGowan's position:

"the Slipe Road property was destroyed by fire and majority of the premises was burnt flat. Mr. Smith renovated the property to continue business operations. Mr. Smith erected a small workshop to the back of the Slipe Road property and got a few machines. Majority of the workers left but I continued to work with Mr. Smith. After the property was fully renovated, Mr. Winston Smith began renting sections of the property to different tenants "

[223] Counsel contends that Mr. Basu's claim that he knew Mr. Smith was the owner is contradictory, as he states that he entered into a lease agreement with Winston Smith, who identified himself as the authorized person to do so. It was submitted that his claim to have known that Mr. Smith was the owner of the property is questionable, especially since he later admitted to being aware of the property's title. It is contended that Mr. Basu's evidence is unreliable and that he is motivated by the desire only to 'ride on the coattails' of Mr. Smith, with the hope that to assist in Mr. Smith's claim of adverse possession, the outcomes would be favourable to him. It is submitted that Mr. Smith's claim of adverse possession fails due to a lack of proof on a balance of probabilities that he took the property from the beneficiaries of Monica Gordon's estate.

[224] On the issue of whether Mr. Smith is entitled to claim recovery of possession and outstanding rental, it is submitted by Counsel that the Court should conclude that he cannot now claim recovery of possession, as he would not be possessed of any interest in the subject property; having not satisfied the 12 years barrier. Nor can he claim for outstanding rentals from Mr. McGowan, as there is no evidence presented to this Court that he has any actual or apparent authority to sue on behalf of Monica Gordon's estate.

[225] As to whether Mr. Basu is "a legal occupier" of the subject property, as alleged, it is contended that Ms. Gordon suggests that Mr. McGowan lacked the authority to lease or sublease the property, despite the absence of evidence regarding the rental agreement between Winston and Monica's beneficiaries. Relying on the authority of **Jamaica Edible**

Oils & Fats Company Ltd vs MSA Tire (Jamaica) Ltd et ux [2018] JMCA App 8, Morrison P stated that even if a sublease is entered in breach of a lease, the owner/landlord retains the right to re-enter.

31-"In discussing a tenant's general freedom to deal with the leasehold estate as an aspect of the common law's preference for "unfettered alienability of land", the learned authors of Elements of Land Law, 5th edn, by Kevin and Susan Francis Gray, state the following (at paragraph 4.2.18): "Moreover, even if a tenant assigns or sublets in clear breach of an express covenant in his lease, the transaction vests a good title in the assignee or sublessee unless and until the wrongful dealing is invoked by the landlord as a ground for forfeiture of the lease. In effect, the dealing operates to transfer or create the relevant estate subject only to the possible exercise of the landlord's right of reentry."

32-" In my view, the operation of this principle is likely to be a significant obstacle to the 1st respondent's chances of success in this appeal, since, although FCJ did threaten to invoke its rights under the head lease upon discovering the presence of the 1st respondent on the premises, there is no evidence that it did so in fact"

[226] Counsel asserted that based on the evidence presented to the Court, despite Ms. Gordon's claim that the beneficiaries were unaware of the sublease, counsel contended that there is no evidence to suggest that any of the beneficiaries took any actions to remove Mr. Basu after discovering the arrangement. Reference is made to the text, **Commonwealth Caribbean Property Law**, by Gilbert Kodilinye, where the learnt author states:

"where a landlord (a) knows of a breach of covenant which makes the lease liable to forfeiture, and (b) does some unequivocal act recognizing the continued existence of the lease, he is said to waive the forfeiture and he loses the right to terminate the lease... a waiver of a breach of covenant extends only to the particular breach in question. It does not extend to future breaches..."43. We contend that Kinkar's situation would be regarded in law as a tenancy at sufferance. "A tenancy at sufferance, on the other hand, occurs when a tenant remains in possession of the leased property without the landlord's permission after the expiration of his term.

[227] Counsel argued relying on text **Commonwealth Caribbean Land Law**, by Sampson Owusu¹ that such a tenant cannot be sued for damages for trespass or mesne profits; however, the landlord has the right to take legal action. It is asserted by Counsel,

¹ Page 531

that the term "tenancy" used to describe this type of arrangement may be a misnomer. In **Burrell v. Perkins** (1802), 102 E. R. 669, this type of tenancy was described as follows:

"A tenant at sufferance is he that first came in by lawful demise, and after his estate ended, continueth the possession, and wrongfully holdeth over."

[228] As a result, it is contended by Counsel that Mr. Smith owes Mr. McGowan damages for use and occupation at the agreed-upon rental rate of Ninety Thousand Dollars (\$90,000.00) since October 2011. That is, Mr. McGowan received early possession from Ms. Miranda in September 2011, and a month later served a Notice to Quit on Mr. Basu, who is still at the property on sufferance. (See **Jamaica Edible Oils & Fats Company Ltd vs MSA Tire (Jamaica) Ltd et al.**, at paragraphs 27-28 of the judgement)

[229] As to whether Mr. Basu is entitled to claim damages for trespass and income loss, it is submitted that to succeed in his claim for trespass to property, Mr. Basu must first demonstrate that Mr. McGowan directly interfered with possession of his belongings. The interference must include some form of physical contact or affectation. There should be some damage to justify a claim, but Mr. Basu must prove not only the damage and its value, but also Mr. McGowan's interference, which the Court is asked to find, he has failed to prove.

[230] Counsel cited the authority of **Althea Drummond vs. Catalina Hammond** Suit No. C. L. 2000 / D 077, judgment delivered on 28 July 2011, in which Sykes, J (as he then was), who delivered the judgement on behalf of Brooks, J (as he then was) outlined as follows:

"On 28 June 1998 she got a disturbing telephone call from Mr. Coldspring. As a result, she returned to Jamaica on or about 7 July 1998 and went to the premises. On her testimony, she "discovered that there was no furniture or anything else in the apartment". None of her belongings were in the property. She says she subsequently recovered from Mr. Coldspring a stainless-steel freezer, a double-door chiller, a four burner electric stove and two chest freezers. These were all items which she had left at the premises. She has not, however, recovered her clothing, jewelry, a stainless-steel sink, a commercial mixer and numerous other things connected with her restaurant operation. She said that her loss is in the region of \$3,650,000.00. She has, however, not proved the value of the loss. She included figures for the various items in her witness statement, but she cannot properly prove special damages in that manner. This was a classic case of

"throwing figures at the head of the court", without proof of those figures, as was mentioned in Bonham-Carter v Hyde Park Hotel Ltd [1948] 64 TLR 177 at page 178. Learned counsel for Miss Drummond, Mrs. Lee Clarke Bennett, submitted that "in the absence of a challenge by the Defendant as to the value of the goods, the Court should award a sum based upon the evidence provided by the Claimant. In support of her submission, she cited Tagro v Cafane and Another [1991] 1 WLR 379. In that case, it was ruled that: 3 "having regard to the first defendant's failure to adduce expert valuation evidence, the judge had been entitled to accept that proffered by the plaintiff..." The Tagro case does not help Miss Drummond. In Tagro, the claimant presented evidence from an expert witness, a surveyor, who provided his opinion on the value of the property. The claimant did not attempt to provide the evidence herself. That, however, is what Miss Drummond has aimed to accomplish. I understand that in the absence of the items, providing expert evidence may be difficult. I also accept that, in appropriate cases, the court will exercise discretion in allowing a deviation from the standard of strict proof of special damages. Miss Drummond's attempt to prove \$3,650,000.00 in special damages through her simple "say so" is, however, unpalatable."

[231] Despite allegations of harassment and intimidation during regular business hours, including the use of guns, Mr. Basu remained at the premises, which on the submission of Counsel, makes these allegations questionable, as it is unlikely that a reasonable person would continue to remain in such a dangerous environment. Mr. McGowan on the other hand it was argued, took steps to address Mr. Basu's behaviour, including a letter from Mrs. Lawrence and a police report. The Court was therefore invited to find his allegations against Mr. McGowan to be unsubstantiated.

[232] Counsel contended that Mr. McGowan must demonstrate whether the sale of the subject property established a legally binding contract with Monica Gordon's estate, based on the principle of "relation back." Specifically, it must be determined if Ms. Miranda, as a prospective Administrator of the estate, executed a valid and binding contract on behalf of the estate prior to her appointment under the Grant of Administration. Counsel referenced the authority of **Milburn-Snell vs. Evans** [2011] EWCA Civ 577, which asserts that the absence of Letters of Administration is detrimental to a case initiated by an administrator before their acquisition. Previously, the law only provided a tunnel vision perspective on this issue. Historically, there have been misconceptions regarding an Administrator's capacity to establish a legally binding contract on behalf of an estate prior to assuming the role. This, it is submitted, resulted in the doctrine of relation back. As argued by counsel, according to Halsbury's Laws of England, the doctrine of relation back applies to valid dispositions of a deceased person's property

made prior to the grant if they benefit the estate or were made during the administration process.

[233] Counsel cited **Williams Mortimer and Sunnicks, Executors, Administrators, and Probate** (paragraph 91), where the authors state:

"cases may, however, be found, where the letters of administrations have been held to relate back to the death of the intestate, so as to give a validity to acts done before the letter were obtained"

[234] In **Morgan, decd. vs. Thomas** (1853) 8 Exch. 302, at p307, Parke B's judgement stated that:

"An act committed by a party who later becomes administrator to the detriment of the estate is not remedied by subsequent administration. It is only in those cases where the act is for the benefit of the estate that the relation back exists, by virtue of which the administrator is able to recover against those who have interfered with the estate, and thus prevent it from being prejudiced and despoiled."

[235] The submission is therefore, that although Ms. Miranda was not officially the Administrator of Monica Gordon's estate at the time of the conveyance, there is clear evidence that the sale of the property benefited her estate. In support of the contention that the sale did benefit the estate, Counsel prayed in aid of the following and asked the Court to answer the question in the affirmative.

- In paragraph 15, Mr. McGowan discusses his initial conversation with Ms. Miranda and Mr. Smith's failure to pay rent.
- In paragraph 18, Mr. McGowan recalls a conversation with Ms. Miranda's sisters, Sharon and Michelle, whose names are confirmed in Sharon's witness statement. Sharon and Michelle expressed their willingness to sell the property "so they could get something off it" and even asked Mr. McGowan if he would be interested in purchasing their mother's home in Beverley Hills.
- Mr. McGowan confirms in paragraph 19 of his statement that Marva and her surviving siblings agreed to sell the property to him.

- In paragraph 23, Mr. McGowan describes a conversation he had with Marva after hiring Minette Lawrence to complete the sale. Specifically, he discusses what Marva told him.
- He stated that "based on her discussions with Mrs. Lawrence, Mrs. Lawrence would pay out approximately 60% of the purchase monies to her and the difference would be used to offset the estate's expenses to include legal fees, stamp duty, death duties, and so on."

[236] As to whether Ms. Miranda ratified or assented to the sale of the subject property to Mr. McGowan after receiving the Grant of Administration in Monica Gordon's estate, it was argued that, if the Court finds that Ms. Miranda lacked capacity to conduct the transaction on behalf of the estate at the time of the deed's execution, that Ms. Miranda's subsequent actions would have ratified the sale, making the sale valid and binding against the estate. Relying on the authority **Harrisons & Crossfields Ltd v London & North-Western Railway** [1917] 2 KB 755, at page 758, the court defined ratification as "*the approval after the event of the assumption of an authority that did not exist at the time.*"

[237] The Court is asked to examine Ms. Miranda's actions after receiving the Grant of Administration as follows:

- After Mrs. Lawrence filed an application on Mr. McGowan's behalf to bring the property under the Registration of Titles Act, he discovered that the property was already registered. Ms. Miranda informed him that she would apply to the Court to take charge of her mother's affairs, and she applied for the Grant on November 10, 2011.
- After receiving the Grant, Ms. Miranda, Ms. Gordon and Mr. McGowan met with their current Attorneys-at-Law, took over the sale from Mrs. Lawrence. They discussed the case.
- Ms. Miranda assured Mr. McGowan that she would resolve issues to complete the transaction and transfer title.

- On October 21, 2014, Mrs. Lawrence, who was still instructed by Monica Gordon's estate, notified Mr. McGowan's Attorney via email that she had received instructions to complete the sale.
- Mrs. Lawrence sent an email with the instrument of transfer for Mr. McGowan's signature.

[238] It is submitted that the foregoing demonstrates that Ms. Miranda whether as potential Administrator or after her appointment, clearly intended to sell the subject property to Mr. McGowan, and thus benefit the estate. It is contended on behalf of Mr. McGowan that there is still a valid and binding contract for the sale of the property, based on the events that occurred and that the Court order the transfer of the property and title to Mr. McGowan.

[239] It is submitted that in view of the evidence of Mr. McGowan that Mr. Smith acted as an agent for the property during the lease agreement, that there is no evidence to suggest Mr. McGowan had any knowledge or notice of Mr. Smith's alleged legal or beneficial interest when he made the initial phone call to Ms. Miranda. It was submitted that by extension, that, based on the lack of substance to establish adverse possession, there is also a lack of knowledge on the part of Mr. McGowan or anyone else of Mr. Smith's alleged claims of interest in the subject property.

[240] Regarding whether, as an alternative to having the property registered to him, Mr. McGowan is entitled to recover the purchase price and/or damages for unjust enrichment, and if so, what rate and for how long, it was submitted that he should be entitled to recover the total purchase price, with interest and/or damages for unjust enrichment, from June 30, 2011 to date, or at the rate determined by the Court. It is substantially undisputed that Mrs. Lawrence received the purchase monies on behalf of Monica Gordon's estate and Mr. McGowan provided an itemized breakdown of how the funds were allocated, with 60% going to beneficiaries and the remainder for estate administration. Despite Marva's claim that she only received a portion of the purchase price, this is evidence, Counsel

contends, that supports Mr. McGowan's claim that she and her siblings would receive 60% of the price.

[241] In conclusion, the Court was asked to find that:

- i. Mr. Smith did not acquire title to the property through adverse possession.
- ii. By extension, his claims for recovery of possession and outstanding rental from Mr. McGowan must fail, because he lacked the actual or apparent authority, as agent of the estate, to sue on their behalf.
- iii. Despite Mr. Basu's lawful entry into the subject property, he is now a tenant at sufferance, and thus, damages for use and occupation of the property are owed to Mr. McGowan from Mr. Smith, at the rental rate of \$90,000.00;
- iv. Mr. Basu failed to prove his trespass and income loss claim.
- v. Mr. McGowan is legally and beneficially entitled to the subject property under the doctrine of relation back;
- vi. Alternatively, Mr. McGowan is entitled to recover the purchase price, plus interest at 1% above the weighted average on commercial loans from June 30, 2011 to the date of judgement; and
- vii. Mr. McGowan, the Defendant/Ancillary Claim, should receive costs.

Submissions for Kinkar Basu

[242] Finally, the position for Mr. Basu is substantially that of Mr. Smiths and he expressly adopts the submissions made on his behalf. He relies on the ownership of the property by Mr. Smith by adverse possession and he says that Mr. Smith has been in open and undisturbed possession of the property for close to 30 years. He asserts that the evidence is that the following evidence from Mr. Smith is credible and to be accepted by the Court:

- Mr. Smith has been a successful furniture maker, has been leasing sections of the Slipe Road property since the 1980s.
- The property was destroyed by fire in 1999, and it was Mr. Smith who made significant repairs and renovations.
- He has been diligent in paying property taxes and has assumed physical possession since the late 1980s.
- In 2006, Mr. Smith entered into a tenancy agreement with Mr. Vernon McGowan, which was later increased to \$50,000 per month.
- Mr. McGowan breached the tenancy agreement by engaging in intimidation and harassment.

[243] The remedies being sought by him in his claim are as follows:

A Declaration that the Claimant Mr. Basu is a legal occupier of all those premises more commonly known as 77 ½ Slipe Road Kingston 5 in the parish of Saint Andrew being lands comprised in Certificate of Title registered at Volume 535 Folio 4 of the Register Book of Titles.

Damages for trespass.

The sum of \$20,000,000.00 for loss of income.

Costs and Attorney's costs.

Discussion

[244] This case centres on competing claims over the ownership and possession of the property at 77½ Slipe Road, Kingston. There were several hotly contested issues in this matter and credibility of the witnesses is central to determining them. I have noted the issues as outlined by all Counsel and have refined the issues as follows:

1. Whether Winston Smith is entitled to be registered on the title as the proprietor by adverse possession.

2. Whether Winston Smith is entitled to rental income from Mr. McGowan for the period from October 2011 onwards.

3. Effect of the Deed of Conveyance executed between Mr. McGowan and Ms. Miranda.

4. Whether Mr. McGowan is the owner of the property.

5. Whether Mr. Basu is entitled to remain in possession of the portion he occupies.

6. Who is entitled to the rental income from Mr. Basu's occupation?

7. Has Mr. Basu established that he is entitled to recover damages for the alleged harassment by Mr. McGowan?

Issue 1: Adverse possession

[245] Mr. Smith claims ownership of the property at 77¹/₂ Slipe Road by virtue of adverse possession, asserting that his undisturbed occupation since 1977 fulfills the statutory requirements. However, the evidence reveals that when he claims to have first come into possession of the property, it was with the permission of Keith and Monica Gordon as a tenant. At some later stage he also operated a business with Keith Gordon as a business partner. As it relates to this earlier possession, it is evident that the relationship between Mr. Smith and Mr. Gordon was very close, with Mr. Smith known to the deceased from he was child. It seems they had a joint affiliation with the Coptic Church and it seems apparent that it is because of this affiliation that Mr. Gordon had such lax controls over the property.

[246] Following Keith Gordon's death, the evidence of Ms. Miranda and Ms. Gordon is that their mother, Monica Gordon, continued to exercise control over the property, by regularly visiting and collecting rent. According to Ms. Miranda, Mr. Smith could not play with her mother's money.

[247] After the death of Mrs. Gordon, different members of the family continued to collect rent. I believe the relationship with Mr. Smith and the family was so close that when he continued in possession, he seemed a convenient choice to continue to manage the property on their behalf. Especially with the violent circumstances surrounding Mrs. Gordon's and her son's death, the family focused more on securing themselves. While there were clear issues with Ms. Miranda's credibility during trial and the extent to which she was aware of what was happening at the property, it is clear that Mr. Smith's

relationship with the property evolved into an agency role. I believe that is how it began, first with the lax payment of rent where he complained of having difficulty paying over his rent, to him eventually collecting rent for the Gordons as their agent from time to time when there was no one in Jamaica to do so.

[248] I believe he managed tenants and collected rent on behalf of the estate's beneficiaries. His actions were consistent with the responsibilities of an agent rather than an adverse possessor. The absence of the beneficiaries from the jurisdiction and their reliance on Smith's management do not transform his possession into ownership, but with the time having passed and the public not being aware of the relationship with the family, a lax arrangement emerged, which seems to have been enforced mostly when there was a family member or affiliate that could attend to it personally.

[249] According to **Farrington**, possession must be both exclusive and hostile to the owner's title. I believe that he was unreliable as an agent and tenant, but I do not find that Mr. Smith's actions were hostile to the estate or its beneficiaries, but rather, aligned with his role as agent for the estate. Applicable also is the finding of Romer J in the authority **Moses v Lovegrover** [1952] 1 All ER 1278, in which it was stated "*... if one looks to the position of the occupier and finds that his right to occupation is derived from the owner in the form of possession or agreement of grant it is not adverse possession*". Mr. Smith's attempt to install tenants and claim adverse possession took advantage of the estate's temporary lack of oversight, but these actions do not constitute lawful adverse possession.

[250] I therefore find that on a balance of probabilities, the inescapable conclusion regarding Mr. Smith's claim of ownership by virtue of adverse possession, is rejected. He is not entitled to be registered as the proprietor by adverse possession as his authority to occupy, rent and manage the property arose at first as a tenancy then from agency, not ownership.

Issue 2: Entitlement to rental income from Mr. McGowan for the period from October 2011

[251] Consequent on my find on issue 1; that Mr. Smith acted as agent for the estate of Monica Gordon and its beneficiaries, the necessary conclusion is that he has no personal entitlement to rent from Mr. McGowan. Any rent collected was in his capacity as agent and should have been accounted for to the estate.

[252] The termination by Mr. McGowan's of his rental payments to Mr. Smith after the purported sale of the property does not alter the legal status of the estate's ownership. Mr. Smith's failure to account for rental income violates his fiduciary duty as an agent, and he cannot retain rental proceeds for his own benefit. The finding on this issue is therefore that Mr. Smith is not entitled to rental income from Mr. McGowan.

Issue 3: Effect of the Deed of Conveyance

[253] The argument made on Mr. McGowan's behalf is based on the fact of a sale of the property, for which he has paid over the full purchase price to Ms. Miranda, beneficiary of the estate of Monica Gordon. According to his case, the property was in a significant state of disrepair when he was first shown it, and it was infested with rodents and other pests. After his initial lease agreement with Mr. Smith, whom he says advised him that he acted as agent for the Gordons, he took possession to establish his business, and he made improvements to the property both out of necessity and based on his tastes. When Mr. Smith increased the monthly rental, he eventually made contact with Ms. Miranda through Mr. Bennett, though a beneficiary of the estate, there is no question that she lacked the authority to act on behalf of the estate when she purported to sell the property to Mr. McGowan.

[254] The claim is made by Mr. McGowan against Ms. Miranda in her capacity as the Administrator of Monica Gordon's Estate. Ms. Miranda denies that Mr. McGowan has a beneficial interest in the property and that the sale was interrupted due to her inability to sell it owing to her lack of authority or capacity. She refutes the validity of the doctrine of "relation back" in this case and Mr. McGowan's entitlement to the orders sought.

[255] Ms. Miranda received a grant of Letters of Administration, in October 2013, about two years after the purported sale, and has asserted that she had not been adequately

advised by Counsel who also represented Mr. McGowan, of her lack of authority to sell the property, particularly in light of the absence of written endorsement from the other beneficiaries. Ms. Miranda also acknowledges that she received money from the sale that would amount to the 60% of the agreed Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) on behalf of the estate, but prior to the Grant of Letters of Administration.

[256] Mr. Smith contends that the doctrine of relation back does assist Mr. McGowan on both limbs. Although the principle of relation back allows for the retroactive validation of an administrator's actions, it is only applicable when those actions are beneficial to the estate or are subsequently ratified by the beneficiaries. Regarding the argument of benefit to the estate, although it is undisputed that the agreed sale price has been paid over, and that portions of the proceeds were to assist in the administration of the estate of Monica Gordon, which is a significant benefit, the purchase was conducted without a valuation for the property. The result is a purchase price that is less than half of the estimate of its value in 2011. As to the ratification of the conveyance, it has been argued that since one of the beneficiaries of Monica Gordon's estate gave evidence that she had opposed the sale from the outset and had declined to ratify it, this fact undermines Mr. McGowan's claim to the applicability of the doctrine.

[257] Mr. McGowan has argued that based on their discussions, the very application by Ms. Miranda for the Grant of Letters of Administration was clearly intended to ratify and affirm the conveyance to him. He believes that the principle of relation back should be applied to the current proceedings and that Ms. Miranda has ratified and affirmed the conveyance, through her subsequent actions. Where it is asserted that the agreed purchase price was lower than the actual value of the property at the time, Mr. McGowan contends that the correct legal principle is that consideration must be sufficient, not necessarily adequate.

[258] I accept the legal position put forward by both sides as to the applicability of the doctrine of relation back to the circumstances of this case. Mr. McGowan must establish his claim by demonstrating whether the sale of the subject property established a legally binding contract with Monica Gordon's estate, based on the principle of "relation back."

In particular, it is necessary to ascertain whether Ms. Miranda, as a potential Administrator of the estate, executed a valid and binding contract on behalf of the estate prior to her appointment under the Grant of Administration.

[259] Counsel cited the case of **Milburn-Snell v. Evans**, which posits that the absence of Letters of Administration is detrimental to a case initiated by an administrator prior to their acquisition. The doctrine of relation back is applicable to valid dispositions of a deceased person's property made prior to the grant if they benefit the estate or were made during the administration process, as per Halsbury's Laws of England.

[260] Counsel referenced **Williams Mortimer and Sunnicks, Executors, Administrators, and Probate** (paragraph 91), which asserts that "*cases may, however, be found, where the letters of administrations have been held to relate back to the death of the intestate, so as to give a validity to acts done before the letters were obtained.*" In **Morgan, decd. vs. Thomas** it was stated that: "An act committed by a party who later becomes administrator to the detriment of the estate is not remedied by subsequent administration." The relationship only exists when the act is for the benefit of the estate and enables the administrator to recover against those who have interfered with the estate, preventing the estate from being prejudiced.

[261] It is undisputed that Ms. Miranda was not yet the Administrator of Monica Gordon's estate at the time of the conveyance; and I accept that her move to seek a grant after the execution of the conveyance was intended to ratify her unauthorized action. There is evidence that the sale of the property benefited her estate. In **Harrisons & Crossfields Ltd v London & North-Western Railway**, the court defined ratification as "the approval after the event of the assumption of an authority that did not exist at the time."

[262] Having considered the evidence and the arguments of Counsel, I prefer the argument for Mr. Smith to the extent that Mr. McGowan has failed to establish, to an adequate level, that either limb of the doctrine applies. While some benefit has clearly been derived by the estate in there being actual sums paid over for the sale and the availability of the balance purchase sums to help to administer the remainder of the

estate, it lacked the consent of the beneficiaries. The unequivocal lack of agreement by at least Ms. Gordon demonstrated that she did not initially agree and certainly did not seek to ratify the agreement. But even if this were no impediment, the issue of the 'benefit' to the estate is the factor that most weighs against the applicability of the doctrine to Mr. McGowan's benefit. The effect of the sale for the sum stated, resulted in what appears to have been a net depletion of the value of the estate, as the property was sold for less than half of its value. Mr. McGowan's argument as to the sufficiency of consideration is not accepted in light of that evidence.

[263] The conveyance executed by Ms. Miranda is therefore declared to be invalid for the following reasons:

- At the time of the conveyance, Ms. Miranda lacked legal authority, as she had not obtained letters of administration for Monica Gordon's estate.
- Not all beneficiaries consented to the sale, which is essential for disposing of estate property. Sharon Gordon, a beneficiary, explicitly opposed the sale and did not ratify it.
- The principle of relation back does not apply here. Although some funds were paid to the estate, the sale price of \$7,500,000.00 million was far below the property's value. Such a transaction results in a net loss to the estate, violating the requirement that pre-grant transactions benefit the estate.

[264] The doctrine of relation back cannot validate a transaction that disadvantages the estate, and there can be no question that the estate benefited from the transaction, the sale resulted in a net disadvantage to the estate. On a balance of probabilities, based on the foregoing, I therefore rule that the conveyance is invalid.

Issue 4: Whether Mr. McGowan is the owner of the property.

[265] The ruling on the prior issue seems dispositive of this issue as to his ownership of the property. Despite paying \$7,500,000.00 towards the purchase, the absence of legal authority on Ms. Miranda's part, coupled with the lack of unanimous beneficiary consent,

and my finding regarding the net benefit to the estate, these render the conveyance void. The principle of relation back cannot apply to this sale because the undervalued transaction harmed the estate. Even though Mr. McGowan made improvements to the property, this does not establish ownership. On a balance of probabilities therefore, Mr. McGowan has failed to establish that he is the legal or beneficial owner of the property.

Issue 5: Whether Mr. Basu is entitled to remain in possession

[266] Mr. Basu was granted possession by Mr. Smith, who acted as an agent for the estate. Since Mr. Smith's rights to the property were derived from his agency relationship with the estate, Mr. Basu's tenancy was contingent upon Smith's authority. Once Smith's agency is terminated, Mr. Basu's right to possession ceases. At best, Mr. Basu becomes a tenant at sufferance — a person occupying the premises without legal entitlement. As the estate has established ownership, it is entitled to recover possession from Mr. Basu. My ruling on that point therefore is that Mr. Basu has no entitlement to remain in possession and must vacate the property.

Issue 6: Who is entitled to the rental income from Mr. Basu's occupation?

[267] Since Mr. Smith was acting as agent for the estate when he collected rent from Mr. Basu, the estate is entitled to all rental proceeds. Mr. Smith's departure from his agency role does not entitle him to retain past or future rental income. An agent has a fiduciary duty to account for all funds collected on behalf of the principal. Mr. Smith must account to the estate for all rental income, including that from Mr. Basu, and any future rent must be paid to the Estate of Monica Gordon. My ruling on this issue therefore, is that the Estate of Monica Gordon is entitled to the rental income from Mr. Basu's occupation.

Issue 7: Claim for damages by Mr. Basu

[268] The evidence in this regard is that Mr. McGowan and men entered Mr. Basu's business and used intimidatory tactics to try to get him to leave the premises. He claims that customers left, often never to return and this resulted in loss to a value of \$20,000,000.00. Mr. Smith supports his account and their respective interests align.

Independent evidence in this regard would have been helpful on Mr. Basu's behalf to establish this and I do not find that the evidence has satisfied me on a balance of probabilities that he suffered loss. In the circumstances, he will fail on this aspect of his claim.

Orders

[269] On the consolidated claims of 2012HCV06540 and 2013HCV00461 the orders are as follows:

- i. A declaration that the legal and beneficial owner of the subject property is the Estate of Monica Gordon and the claim of adverse possession by Mr. Smith is rejected;
- ii. Recovery of Possession of the property is ordered in favour of the Estate of Monica Gordon, and all tenants shall deliver up possession of same within 120 days of the date hereof;
- iii. Winston Smith is declared to have been at all material times for the purposes of renting the premises and granting possession to tenants, the agent of the Estate of Monica Gordon, and shall account for all rental income derived from the property since November 2006;
- iv. The Estate of Monica Gordon shall refund to Mr. McGowan, the sum of \$7,500,000.00 paid to Ms. Miranda, together with interest at a rate of 1% above the weighted average on commercial loan rates for the period June 30, 2011 to the date of the judgment;
- v. Mr. Basu is declared to have been a lawful occupier of the property for which he was given access by his then landlord, Winston Smith, acting as agent for the Estate of Monica Gordon;
- vi. No order is made as to damages for lost income claimed by Mr. Basu, which was not established on a balance of probabilities;

- vii. All rental income for tenants remaining on the property shall be paid to the Estate of Monica Gordon from November 1, 2024 until they shall vacate the property;
- viii. The issue of costs is adjourned to November 8, 2024 and all parties are allowed to submit in writing on the issue by October 31, 2024.