



**Neutral Citation Number: [2025] CIGC (Civ) 15**

**Cause No: G2018-0135**

**IN THE GRAND COURT OF THE CAYMAN ISLANDS**

**CIVIL DIVISION**

**IN THE MATTER OF SECTIONS 28(f)-(g), 135, 137(4), 160 OF THE REGISTERED LAND ACT (2018 REVISION) AND SECTIONS 19(1), 20, 23(b) OF THE LIMITATION ACT (1996 REVISION)**

**BETWEEN:**

**KAREN IDITHA EBANKS**

**Plaintiff**

**-and-**

**HARVEY H. PARCHMENT**

**Defendant**

**Appearances:** Mr H Orren Merren IV for the Plaintiff  
Ms Stacy Thompson of Thompson Legal for the Defendant

**Before:** The Honourable Justice Jalil Asif KC

**Heard:** 2-3 May and 26 June 2024

**Judgment delivered** 15 April 2025

*Land law—adverse possession—whether title acquired by prescription—whether occupation was adverse or with permission of legal owners*

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## JUDGMENT

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### A. Introduction

#### A.1 *The Cast*

1. This case involves a regrettable family dispute between the Plaintiff and the Defendant, her uncle, regarding ownership of a property at Fern Circle, South Sound, Grand Cayman (“the Property”). The Property is registered in the Defendant’s name. The Plaintiff contends that she has a right to have title to the Property registered in her name, whilst the Defendant disputes this. It is therefore my responsibility to determine who is correct.
2. As the dispute involves three generations within the same family, it is useful to summarise the relevant family relationships at the outset. For clarity in identifying the various persons referred to in this judgment, I have used first names but no disrespect is intended to them in doing so.
3. At the head of this branch of the family is Coriel Ebanks. She had three children who feature in this case: Colleen Ebanks; David Parchment; and Harvey Parchment, the Defendant. Coriel died on 31 October 2004.
4. Colleen Ebanks had several children, including: Karen Idith Ebanks, the Plaintiff; Curtis Ebanks, Phillip Ebanks and Daylean Ann Dixon. Colleen died on 22 June 2002, pre-deceasing Coriel, her mother.
5. Karen had two children of her own, Melissa and Marleena. Melissa in turn had five children but died shortly after the birth of her youngest child. Karen has therefore taken on responsibility for Melissa’s children, who live with her at the Property. In addition, one of Karen’s nephews, Hank Bodden Jr, has lived at the Property at certain times during the relevant period.
6. David Parchment was Colleen’s brother and Karen’s uncle. David died on 22 April 2013.

7. Harvey Parchment is Colleen's younger brother and Karen's uncle. He has three children who feature at certain times. They are Gerry Parchment; Rodney Parchment and Denvy Parchment.
8. Karen was represented by Mr H Orren Merren IV and Harvey by Ms Stacy Thompson of Thompson Legal. I am grateful to both of them for their helpful arguments. I am also grateful to the parties for their patience in awaiting this judgment.

## **B. Summary of the parties' cases and the evidence**

### ***B.1 Karen's case***

9. Put shortly, Karen's case is that she has obtained title to the Property by prescription, colloquially by the exercise of squatter's rights. She argues that she has been in occupation of the Property for over 30 years, including at least 13 years after Harvey became one of the registered proprietors and before she commenced these proceedings. Karen accepts that she initially lived at the Property with the permission of Coriel and Colleen. However, she argues that any licence to occupy in her favour terminated when the later of them died or when they disposed of the Property. Karen maintains that this was in October 2004, and that her occupation has been adverse to Harvey's title since then; alternatively, it has been adverse since January 2006 when title to the Property was registered in Harvey's name. Karen alleges that she is therefore entitled to have possessory title to the Property registered in her name because the statutory limitation period of 12 years has passed, and Harvey is therefore unable as a matter of law to regain possession of the Property.
10. In addition, although it was not positively argued before me, Karen raises in her affidavit evidence that she can rely on proprietary estoppel or a constructive trust based on a common intention between Karen and Coriel that she should have a right to live at the Property for as long as she wishes.

### ***B.2 Harvey's case***

11. Harvey disputes Karen's claim to adverse possession. He asserts that Karen's occupation of the Property was the result of licences to occupy, which he asserts arise on various bases, and only terminated in about 2013. As a result, he argues that Karen has been in adverse possession for a period of less than 12 years and has not obtained any possessory title to the Property. He also disputes that

there was any common intention that Karen should be able to live at the Property such as to give rise to a proprietary estoppel or constructive trust.

### ***B.3 The evidence***

12. In chronological order, there are the following affidavits before me:
  - 12.1 Karen's first affidavit and exhibit KIE<sup>1</sup> sworn on 9 July 2018;
  - 12.2 Harvey's first affidavit sworn on 17 July 2018;
  - 12.3 the first affidavit of Hank Bodden Jr sworn on 25 August 2018 in support of Karen's claim;
  - 12.4 the affidavit of Daylean Ann Dixon sworn on 26 August 2018 in support of Karen's claim;
  - 12.5 Karen's second affidavit and exhibit KIE-2 sworn on 27 August 2018;
  - 12.6 Harvey's second affidavit sworn on 23 November 2020;
  - 12.7 the affidavit of Gerry Parchment sworn on 24 November 2020 in support of Harvey's case;
  - 12.8 Karen's third affidavit sworn on 16 December 2020;
  - 12.9 Karen's fourth affidavit and exhibit KIE-4<sup>2</sup> sworn on 7 April 2024; and
  - 12.10 the second affidavit of Hank Bodden Jr and exhibit HAB-2<sup>3</sup> sworn on 7 April 2024 in support of Karen's claim.
13. The parties agreed that I should not admit into evidence Daylean's affidavit as she was not able to attend for cross-examination and no hearsay notice to rely on her affidavit has been served.
14. In addition to the affidavit evidence, Karen, Hank, Harvey and Gerry were all cross-examined on their affidavits.
15. Ms Thompson put to both Karen and Hank that their evidence has been made up or was contrived to support Karen's claim. Having seen Karen and Hank give evidence, I expressly reject that suggestion.

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<sup>1</sup> NB Contrary to GCR O.41, r.12(1), this exhibit is not numbered

<sup>2</sup> NB Contrary to GCR O.41, r.12(3), there is no exhibit KIE-3

<sup>3</sup> NB Contrary to GCR O.41, r.12(3), there is no exhibit HAB-1

16. I have no concerns about any of the witnesses. All of them appeared to me to be honest and to be trying hard to assist the Court. In particular, I noted that both Hank and Gerry gave evidence without apparent thought to whether their answers were helpful or not to the position of the party who had called them. I accept that all the witnesses gave their evidence honestly within the limits of the useful evidence that they could give. However, it does not follow from that conclusion that their evidence is necessarily admissible, useful or accurate, in all respects.

## C. The statutory context

### C.1 *Adverse possession*

17. The relevant statutory provisions are set out in the Limitation Act and the Registered Land Act. So far as material, the Limitation Act (1996 Revision) is in the following terms:

***“Time limit for actions to recover land***

19. (1) *An action shall not be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.*

...

***Provisions with respect to actions to recover land***

20. (1) *Where the person bringing an action to recover land or some person through whom he claims has been in possession of the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action shall be treated as having accrued on the date of such dispossession or discontinuance.*

(2) *Where any person brings an action to recover any land of a deceased person and that deceased person was —*

*(a) on the date of his death in possession of the land; and*

*(b) the last person entitled to the land to be in possession of it,*

*the right of action shall be treated as having accrued on the date of his death.*

...

(9) *No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to in this subsection and in subsections (10), (11) and (12) as “adverse possession”); and where under subsections (1) to (8) any such right of action is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.*

(10) *Where a right of action to recover land has accrued and after its accrual, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be treated as having accrued and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession.*

(11) *For the purpose of determining whether a person occupying any land is in adverse possession, it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter’s present or future enjoyment of the land:*

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*Provided that this subsection shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case.*

...

***Extinction of title to land***

23. *Subject to —*

...

*(b) section 135 of the Registered Land Law (1995 Revision), at the expiration of the period prescribed by this Law for any person to bring an action to recover land, including a redemption action, the title of that person to the land shall be extinguished.”*

18. The Registered Land Act (2018 Revision) provides that:

***“PART IX – Prescription***

***Acquisition of title by possession***

*135. The Limitation Law (1996 Revision) shall apply to registered land in the same manner and to the same extent as it applies to land not registered, except that where, if the land were not registered, the estate, right or interest of the owner therein would be extinguished, such estate, right or interest shall not be extinguished but shall be deemed to be held by the proprietor for the time being in trust for the person who, by virtue of the said law, has acquired title against any proprietor, but without prejudice to the rights and interests of any other person interested in the land whose right or interest is not extinguished by the said law.”*

The remaining sections in this Part of the Act deal with the practicalities of applying to the Registrar for title to be registered, and the right of the applicant or the proprietor to apply to the court to determine any question whether the proprietor's title has been extinguished and whether the applicant has obtained title by adverse possession.

**C.2 *Proprietary estoppel or constructive trust***

19. The Registered Land Act provides from s.23 onwards as follows:

***“PART III – Effect of Registration***

***Effect of registration with absolute title***

*23. Subject to section 27, the registration of any person as the proprietor with absolute title of a parcel shall vest in that person the absolute ownership of that parcel together with all rights and privileges belonging or appurtenant thereto, free from all other interests and claims whatsoever but subject-*

*(a) to the leases, charges and other incumbrances and to the conditions and restrictions, if any, shown in the register; and*

*(b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register:*

...

***Voluntary transfer***

*27. Every proprietor who has acquired land, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the*

*transferor held it ... but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.*

***Overriding interests***

*28. Unless the contrary is expressed in the register, all registered land shall be subject to such of the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register-*

...

*(f) rights acquired or in process of being acquired by virtue of any law relating to the limitation of actions or by prescription;*

*(g) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof save where inquiry is made of such person and the rights are not disclosed;*

...”

**D. Factual findings**

***D.1 The initial purchase of the Property and the basis of Karen’s occupation***

20. In August 1992, Coriel and Colleen bought the Property. They funded the purchase from the proceeds of sale of their previous home in George Town. The Property was registered in their joint names. Karen and other family members had lived with them at their previous home. Karen and certain other family members moved into the Property with Coriel and Colleen. Karen has lived in the Property ever since Coriel and Colleen bought it.
21. Harvey asserts in his affidavits that he, David, Coriel and Colleen agreed that Karen would act as carer for Coriel and would be allowed to live in the Property for that reason. He does not say that Karen was a party to this alleged agreement. It seems unlikely that she would have been excluded from any discussions or from the alleged agreement. In cross-examination, Harvey backtracked from his affidavit, accepting that it was Coriel and Colleen who made the decision about Karen living at the property and that they simply told David and Harvey that that was to be the arrangement. Karen disputes that there was any agreement as described by Harvey and disputes that she acted as carer for Coriel. She says she simply helped around the house and ran errands as she was the only driver. I find that there was no agreement that Karen was to be allowed to live at the Property in return for providing care for Coriel. Instead, the arrangement was a more informal one, that Karen would help around the house as anyone sharing a property with other members of the extended family would do.

***D.2 An allegation of wrongdoing against Karen***

22. Harvey states that he and David confronted Karen, apparently in about 2002, with an allegation that she had been dishonest regarding funds in a bank account in the name of either Coriel or David, to which Karen was a signatory. He says that David removed Karen as a signatory from the account as a result. Karen denies that this occurred and says that she was never a signatory on Coriel's bank account. Harvey's assertion is very broad and unspecific, and there is no evidence from any other witness to support it. I do not accept it; but even if it were true, it is not relevant to the question whether Karen has obtained possessory title to the Property.

***D.3 The period after Colleen's death; transfer of Property to David and Harvey***

23. On 27 June 2002, Colleen died. The parties agree that Coriel became the sole proprietor of the Property by right of survivorship.

24. A few months after Colleen's death, Coriel told Karen that Coriel intended to add Karen's name to the title to the Property along with David and Harvey in recognition of the care that Karen had provided to Coriel and Colleen over the years. She says that Coriel told her that she would always be able to live at the Property and that Coriel would get David to add Karen's name to the title. Karen responded that it was a matter for Coriel. Karen adds that Coriel mentioned this to David many times, but David did not deal with it. In cross-examination she indicated that the only people present during these conversations were Karen, Coriel and David. Thus, there is no independent corroboration of them. Nevertheless, I accept as true Karen's evidence that Coriel made these statements.

25. During 2003, Karen built an extra bedroom onto the Property for Melissa. Karen says that she had Coriel's permission for this.

26. On 26 October 2004, Coriel executed a transfer of land in form RL-1 to transfer the Property to David and Harvey jointly "*out of natural love and affection*". Harvey said in cross-examination that he had not told anyone that he and David had become the owners of the Property, but he said that more than half of the family were aware, although he was not able to say how they learned this. Karen says she was not aware of the transfer to David and Harvey until the second half of 2016, and Hank says the same. I accept that evidence.

**D.4 The period after Coriel's death**

27. On 31 October 2004, Coriel died. Karen continued to live at the Property at all times following Coriel's death.
28. On 3 January 2006, David and Harvey were registered at the Land Registry as joint proprietors of the Property. Again, Karen and Hank both say they were unaware that David and Harvey were the registered proprietors until about the second half of 2016 and thought that the Property remained in Coriel's and Colleen's names. This is consistent with Karen's evidence that when asked about adding her name as a proprietor of the Property, David told her that he needed to deal with getting letters of administration for Coriel's estate first.
29. Karen continued to live at the Property and treated it as if she were the owner. She paid all outgoings and dealt with all maintenance. Between 2006 and 2008, Karen caused various works to be done to the Property, including adding a bedroom for Marleena and an outside storeroom. She did not seek or obtain permission from anyone for these works.

**D.5 Discussions regarding Karen's occupation and rent**

30. In his second affidavit, Harvey says that he and David discussed Karen's presence at the Property after Coriel's death, although he is vague about the timing of this. Harvey wanted to charge Karen rent but David disagreed. He adds:

*"8. ... We did discuss the matter of paying rent with [Karen] but she appealed to David's sympathy and I relented to David's wishes. As a result, [Karen] continued residing in the property with permission to do so."*

In cross-examination, Harvey said that he and David had discussed the situation at the Property but because they had different ideas about what to do, Harvey had deferred to David. Harvey said that he had not given Karen any permission to occupy the Property. He was unable to say whether David had done so. He confirmed that he was completely against allowing Karen to occupy the Property. In re-examination, Harvey said that he had first asked Karen to pay rent while David was still alive, but she had refused and said she was not going to leave. He had not done anything in response to this, apart from speaking within the family.

31. Harvey says in his first affidavit that in about 2010, after David had suffered a heart attack, he and David agreed that they would require Karen to cease living at the Property.

32. Harvey then says:

*“5. ... David and I discussed making her a ‘paying tenant’ but she refused this offer.”*

In context, this appears to be a different discussion from the one Harvey mentioned earlier in his affidavit. However, Harvey’s description is again vague as to its timing and he provides no details regarding the alleged discussions with David or Karen. He was unable to specify a date or time period in cross-examination or provide any further details.

33. Karen disagrees that there were discussions with her regarding paying rent at the times described by Harvey. She says that the only discussions that she had about paying rent were with Harvey, and did not involve David, and that those discussions were in 2016 during the second meeting described later in this judgment.

34. I conclude that it is unlikely that there was any discussion with Karen about paying rent for occupying the Property in the period before David died. This is primarily because of Harvey’s evidence that David did not want to charge Karen rent and that Harvey deferred to David on this. However, it is significant that:

34.1 Harvey says he did not give Karen any permission to occupy the Property over this period, and there is no evidence that David did so; and

34.2 Karen did not pay rent over this period and, on Harvey’s case, she positively refused to do so or to vacate the Property.

#### ***D.6 The first family meeting***

35. Harvey continues in his first affidavit:

*“6. ... following the death of David on April 22, 2013, I approached [Karen] and made known to her, that I wished to fully occupy the [Property] and that I would be requiring her to leave. She became very abusive in response and used threatening language and indecent language to me, stating that if I ever came back to the [Property]; she would chop me up as she ‘owns’ the [Property].”*

This is ambiguous as to timing. In cross-examination, Harvey said he thought that this meeting was in 2013 but accepted that it could have been in 2016.

36. In his second affidavit, Harvey provides some additional detail regarding what was discussed but not regarding timing. He says:

*“9. ... Upon my brother’s death ... I took steps to have [Karen] leave the property.*

*10. An initial step was to go to the property to speak with [Karen] on the change of position regarding her staying there. There was no longer any permission after David’s passing for her to be there without payment of rent. [Karen] became irate with me and told me that she would not pay rent and that if I wanted her to pay rent I was to fix up the house. My response was that I would only fix the house if she consented to payment of rent. The discussion ended on that note.*

*...*

*11. As I became increasingly frustrated by the situation, I would, on one or two of the occasions, return to the property to speak with [Karen]. At one of those times in 2016, the situation became heated and [Karen] told me that the property was hers. I was agitated by that bold statement and became even more determined to get [Karen] out.”*

Harvey added in cross-examination that he wanted Karen to leave the Property because she had been there a long time; he wanted to live there. He accepted that he had heard Karen say that she owns the Property many times, and that she had said that to him.

37. Karen disputes that there was a discussion with Harvey in April 2013. Her account is that Harvey first called a family meeting to discuss the Property in 2016 not 2013, seemingly in about March or April. The meeting took place at the Property on a Saturday, with many family members present. She says there was a discussion, and several people said that Karen’s name should be added to the title to the Property. Harvey then said that the Property would be put into the names of Karen and Denvy. Karen says that she did not say anything during the meeting. She was asked in cross-examination why she did not object to the proposal to include Denvy on the title. Karen said it bothered her, but she thought it was fair to allow Denvy to be added to the title and for Karen to be the other owner. She accepted that she did not protest that Harvey did not have the right to determine who would be on the title deeds. Ultimately, Karen did not think anything would come of the proposal because David had said on many previous occasions that her name would be added to the title without anything happening.
38. Hank Bodden does not recall there being any family meeting in 2013. He was not living at the Property between 2007 and 2014 but said that he continued to be a frequent visitor for social reasons as the Property was about 5 minutes from his place of work. He therefore believes he would have been aware if there had been a discussion between Harvey and Karen during 2013 as Karen would have discussed it with him. He does recall that there were two family meetings in 2016, but he only attended the second one.

39. Gerry's evidence is that he overheard a few telephone discussions between David and Harvey about Karen's presence at the Property. In his affidavit he says that Harvey started to tell Karen that she should vacate the Property from about 2013 onwards. However, he accepted in cross-examination that he was not present when such statements were made to Karen. I therefore discount this aspect of his evidence as being hearsay.
40. I conclude that the first family meeting took place in about March or April 2016. I consider it is likely that Harvey did make one or two informal requests to Karen during the period from April 2013, after David's death, to 2016 that Karen pay rent for the Property, which she refused.

***D.7 The second family meeting***

41. Karen says that there was another discussion in July 2016 regarding the Property. She says that Harvey called another family meeting. Harvey came to the meeting with his son, Rodney. Karen says that Harvey told the family that he wanted to sell the Property or to renovate it and rent it out. He said they had to vacate the Property within 30 days or pay rent. She refused and said that the court would have to decide. Her brother, Curtis Ebanks, then said that the meeting was over, and Harvey and Rodney left.
42. Hank agrees that this family meeting took place, and says he was present at it, standing just outside the door of the room where the meeting took place. His evidence is that Rodney announced that Harvey was getting old and needed some income, so those living in the Property would have to pay rent or Harvey would have to sell the Property. He says that Karen said that she would not leave the Property and that she would see Harvey in court. Curtis then said that the meeting was over and that no one would be paying rent or moving out.
43. Harvey states that on 6 July 2016 he and Rodney met with Karen. He does not suggest that it was a family meeting or that anyone else was present. He says that they told Karen that she should leave the Property within 30 days or else start paying a monthly rental. He says that Karen became abusive and threatening. He left and decided to obtain legal advice. There is no evidence from Rodney and there is no suggestion that Gerry attended or was involved at this stage.

44. The only real difference between the parties as to this meeting is therefore whether it involved the wider family or just Karen, Harvey and Rodney. I do not need to resolve that question in order to determine the issues in the case.

**D.8 Post-meeting developments**

45. Karen says it was following the July 2016 meeting that she decided to make enquiries of the Land Registry and first learned as a result that title to the Property had been transferred to David and Harvey in 2004 and registered in their names in 2006: until then she believed it was still registered in the names of Coriel and Colleen.

46. In response to a comment in Harvey's affidavit evidence, Karen responds that she accepts that the utility bills for the Property were not in her name. However, she says that the electricity and water bills continued to be in Colleen's name until about July 2018 and were only transferred into Harvey's name at about that time, and she exhibited copy payment receipts confirming the account names. This supports her evidence that she believed the Property remained in Coriel's and Colleen's names until late 2016. I accept that evidence.

**D.9 The letters from Harvey's attorneys and from Harvey**

47. On 6 December 2016, the attorneys who were then engaged by Harvey wrote to Karen demanding that she vacate the Property. I note that Karen said in her oral evidence that she had not received this letter. However, this seems inherently unlikely given that she engaged an attorney in 2017, who expressly responded to the letter on 7 July 2017.

48. The letter threatened proceedings against the Plaintiff to recover possession. The letter was headed "NOTICE TO KAREN EBANKS TO VACATE PROPERTY ...". The body of the letter said:

*"It is noted that you modified the living room of the said house, without the consent of Ms Colleen or Ms Coriel and this action took place despite your being denied permission several times, when you indicated a desire to do so.*

*Of significant note also, is the fact that David Parchment and Harvey Parchment, both sons of Ms Coriel, both expressed their concerns regarding your conduct of defiance and disrespect, to their mother Coriel Ebanks, and the fact that they themselves had tried to get you out of the home, but failed to carry through with this plan; as they did not want to upset Ms Colleen. ...*

*My instructions are that Harvey Parchment and David Parchment had been actively pursuing the matter of seeking that you vacate the home, to no avail. You were even asked to enter into formal arrangements of being a paying tenant, but you refused to enter into those formal arrangements.*

*You are also reported to have remarked to a friend of Harvey Parchment, who visited the house on his behalf, that if Harvey Parchment ever came to the house, you would chop him up; while stating that this house belongs to you.*

*It is also alleged that on the 9th of July 2016, HP along with his son Rodney, visited you at the house to inform you, that they had intentions of renovating the house and putting it up for rent, and therefore requested of you; that you find alternative accommodation.*

*... they sought to explore the possibility with you, of renting the property to you at a reduced cost; on account of your being family.*

*... You further stated that you will never leave the house or pay rent to Mr Harvey and that they will have to take you to court, in order to have you removed from the property.*

*It has also come to the attention of my clients, that you have been charging rent from your nephew, daughter and anyone else residing at the house.*

*You have also un-authorisedly allowed the backyard to be destroyed, due to the presence of several vehicles parked there and the premises being used as a vehicle repair operation. ...*

*This Letter of Demand and Notice to Vacate, is therefore being delivered to you, advising of the need for you to vacate the property, within one month of the service or receipt by you of the same ... you are occupying illegally and in defiance of his proprietary rights; and without his consent. You are therefore from hereon going forward, being regarded as a trespasser.*

*Please therefore be advised, that a failure to comply with the terms set forth in this Letter of Demand and Notice to Vacate Premises, will result in judicial action being initiated in the Courts, with a view to having you evicted from the property. ...”*

49. Harvey says in his second affidavit that he was not involved in engaging and instructing the attorneys who sent the letter, which he left to Rodney to handle as he had some medical issues at the time. He says he did not see the letter before it was sent, and adds:

*“16. ... The letter is not entirely accurate as it states that my brother and I took steps to get [Karen] out of the property. As mentioned herein, David was always sympathetic to [Karen] and therefore the permission for her to remain was extended to her while he was alive. [Karen] would have plainly understood that her permission to remain was voided upon David’s passing in 2013.”*

50. Harvey also disputed that the letter was accurate in saying that a friend had visited Karen and had been told that she would “chop” Harvey if he went to the Property. However, Harvey’s own evidence in paragraph 6 of his first affidavit is that Karen used that phrase directly to Harvey. Thus, to the extent that there is an inaccuracy in the letter in this regard, it seems to be as to the identity of the recipient of Karen’s statement that she would “chop” Harvey, rather than as to whether it was made at all.

51. Even allowing for Harvey’s suggestion that the content of the letter was not necessarily accurate in all respects, in my view it includes important support for Karen’s case that her occupation of the Property was adverse to Harvey’s title, and moreover that Harvey was well aware that she was occupying the Property to his exclusion.

52. Karen did not vacate the Property. Harvey did not commence the threatened legal proceedings. As mentioned, Karen's attorney responded to the letter on 7 July 2017 asserting that Karen had obtained possessory title to the Property and rejecting the demand that she vacate.
53. On 8 May 2018, Harvey wrote to Karen directly, again demanding that she vacate the Property within 30 days, and threatening to commence legal proceedings to recover possession if she did not. Harvey states in his first affidavit that his letter was served by a process server on 11 May 2018. However, he was unable to confirm that this was correct when challenged in cross-examination: he said he did not recall anything about a process server being involved, he said he had simply written the letter.

***D.10 Matters come to a head***

54. On 2 June 2018, Harvey and Gerry, accompanied by RCIPS officers attended at the Property.
55. Harvey says that it was he and Rodney who went to the Property, and he does not identify the date of their visit. There is no evidence from Rodney, and Harvey and Gerry's evidence is that his involvement had diminished after 2016, and that Gerry had become more involved in helping Harvey. Gerry says that he went to the Property with Harvey on Saturday 2 June 2018. I therefore conclude that Harvey's evidence that he went to the Property with Rodney is wrong, and that he went with Gerry on 2 June 2018.
56. Harvey says in his first affidavit:

*"12. ... on the same day, we took pictures of the interior of the house and discovered that [Karen] had effected changes to the interior and what was once a three bedroom house, was now a five bedroom house as [Karen] had put up partitions and had been renting the spaces. All of this was done without my permission ... my permission had not been obtained. ...*

*13. ... at all material times, [Karen] was well aware that I was the proprietor of this house ..."*

However, in cross-examination, Harvey said that he already knew about Karen's sub-division of rooms within the Property at the time that Karen carried out the work because he saw it while visiting Coriel, i.e. it was not a new discovery. He added that no one had given Karen permission for these works.

57. I do not accept this evidence. It might be the case that Harvey saw the addition of the bedroom that Karen carried out in 2003, as mentioned earlier in this judgment. However, Karen's evidence, which I accept, is that this was done with Coriel's permission. It was therefore not done without authority.

58. Secondly, I do not accept as accurate Harvey's evidence that he had previously seen the other works that Karen had carried out at the Property. This is because Karen's evidence is that she carried them out after Coriel's death in 2004; and the evidence from the witnesses, including Harvey, is that he very rarely visited the Property after Coriel died and before the meetings in 2016 and his visit in 2018, and there is no suggestion that he was able to access the interior. Notably, Gerry said in cross-examination that he and Harvey did not have keys to the Property.
59. Gerry says that their intention was to take pictures of any damage or changes to the Property made without Harvey's permission. Gerry and Harvey arranged for RCIPS officers to accompany them. Gerry and Harvey then entered the Property and took photographs. It appears that Karen returned to the Property whilst Harvey and Gerry were there.
60. On 4 June 2018, Karen's attorney applied for a caution to be registered on the title to the Property. This was actioned by the Registrar of Lands on 9 July 2018.
61. On 10 June 2018, Karen's attorney responded to Harvey's letter again asserting that Karen had obtained possessory title to the Property and that Harvey held the legal title on trust for Karen as a result. They indicated that Karen intended to apply for title to be registered in her own name. In addition, they complained about his actions on 2 June 2018 and his involvement of police officers in a civil dispute. Karen iterates this complaint in her second affidavit.
62. On 4 July 2018, Harvey caused the water supply to the Property to be disconnected. On 6 July 2018, he caused the electricity supply to be disconnected. He and Gerry describe this as an attempt at self-help but, in my judgment, it was extremely misguided in circumstances where Karen's attorney had made clear that she was claiming possessory title to the Property and the evidence shows that Karen had been paying the utilities at all times until July 2018. Karen's evidence is that she has paid the bills and all other expenditure in relation to the Property since Coriel died. She says that neither David nor Harvey ever made any contribution to the outgoings or maintenance of the Property, and that Harvey had not visited or shown any interest in the Property until the meetings in 2016 and then again in 2018.

63. On 9 July 2018, Karen's attorney applied to the Registrar of Lands for title to the Property to be registered in Karen's name based on her adverse possession. The Registrar of Lands raised a number of queries on the application, which appears not to have proceeded further in the circumstances.
64. The Plaintiff then commenced these proceedings by originating summons filed on 10 July 2018. On the same day, she filed a summons seeking an injunction to require Harvey to reconnect the water and electricity to the Property. That application came on for hearing before Carter J on 19 July 2018 when she accepted undertakings from Harvey that he would do so in lieu of Carter J granting the injunction sought.
65. The Defendant did not serve any Defence to the originating summons, and did not advance any counterclaim for possession of the Property. Instead, he swore and filed affidavits in response on 17 July 2018 and 23 November 2020.
66. After the injunction hearing before Carter J on 19 July 2018, the parties failed to advance the matter towards a hearing, despite one side or the other filing notices of intention to proceed in December 2019, January 2022 and September 2023.
67. The originating summons was finally listed for hearing on 2 and 3 May 2024, and oral closing submissions were delivered on 26 June 2024. The parties filed further supplemental written closing submissions on 10 July 2024 in response to a question that I raised during their oral closing submissions.

## **E. Analysis and decision**

### ***E.1 Nature of Karen's occupation before October 2004***

68. There is no evidence of a specific agreement regarding Karen's occupation of the Property in the period from 1992 until October 2004. As indicated earlier in this judgment, my conclusion is that there was no formal agreement, just an informal arrangement that Karen would help around the house. In those circumstances, I conclude that the permission to occupy the Property initially given to Karen by Coriel and Colleen, and then by Coriel following Colleen's death in 2002, amounts in law to a revocable licence. Karen therefore occupied the Property in this period as a bare licensee of Coriel and Colleen, until Colleen's death, and as a bare licensee of Coriel thereafter until October 2004.

***E.2 Karen's status in October 2004 following the transfer of the Property***

69. The Privy Council in *Terunnanse v Terunnanse* [1968] AC 1086, an appeal from the Supreme Court of Ceylon (now Sri Lanka), confirmed that a revocable licence automatically terminates on the assignment of the land in question or the death of the person who granted the licence: see Lord Devlin at 1095G.
70. Thus, Karen's licence to occupy the Property automatically terminated on 26 October 2004, when Coriel executed the transfer of land in favour of David and Harvey. At this point, Coriel no longer had any proprietary interest in the Property, as she had transferred that interest to David and Harvey. The fact that David and Harvey did not register the transfer until January 2006 is immaterial, since they were the beneficial owners from the date of the transfer and equity treats as done that which should be done.
71. There is no suggestion by anyone that David and Harvey granted a new licence to occupy to Karen at this time. Indeed, as set out earlier in this judgment, Karen and Hank's evidence, which I accept, is that they did not know of the transfer to David and Harvey or the registration of their title until the second half of 2016.
72. In the course of oral closing submissions, I raised with counsel whether Karen's right to occupy the Property might amount to an overriding interest, which would be preserved by the operation of s.28 of the Registered Land Act, because she was in actual occupation at the time of the transfer to David and Harvey. If that were so, then the result would be that David and Harvey acquired the Property subject to Karen's right of occupation, and must be taken to have consented to it, and Karen's occupation thereafter would not be adverse to their title.
73. Mr Merren and Ms Thompson helpfully provided written submissions on this point to similar effect, namely that:
- 73.1 a bare licence does not create any proprietary interest, it is personal in nature – see *The Law of Real Property* (Megarry & Wade, 9<sup>th</sup> ed, 2019<sup>4</sup>) at 33-001 and following, relying in particular

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<sup>4</sup> The 10<sup>th</sup> edition was published in September 2024, after closing submissions were delivered.

on the House of Lords decision in *Street v Mountford* [1985] A.C. 809 and the English Court of Appeal's judgment in *Ashburn Anstalt v Arnold* [1989] 1 Ch 1; and

73.2 because of that personal character, a bare licence cannot give rise to an overriding interest – see *Ashburn Anstalt v Arnold*.

74. As to the point that a bare licence cannot give rise to an overriding interest, Fox LJ said in *Ashburn Anstalt v Arnold* at 13D-F:

*“... Lord Templeman in Street v. Mountford [1985] A.C. 809, 814 said:*

*‘A licence in connection with land while entitling the licensee to use the land for the purposes authorised by the licence does not create an estate in the land.’*

*That was not challenged on behalf of Arnold & Co., but it was said that a contractual licence does give rise to an interest (as opposed to an estate) in the land; we must assume for this purpose that the rights are of sufficiently certain duration to be capable of subsisting as an interest in land. If they are not, the point does not arise. The question then is whether Arnold & Co.'s proposition is correct in law. Until comparatively recently it would, we think, have been rejected. As long ago as 1674, in Thomas v. Sorrell (1674) Vaug. 330, 351, Vaughan C.J. said:*

*‘A dispensation or licence properly passeth no interest, nor alters or transfers property in any thing, but only makes an action lawful, which without it had been unlawful.’”*

75. Following an extensive survey of more recent case law leading to a conflict between authorities at the level of the House of Lords and the English Court of Appeal, Fox LJ concluded at 22A-D:

*“... It would seem that we must follow those cases or choose between the two lines of authority. It is not, however, necessary to consider those alternative courses in detail, since in our judgment the House of Lords cases, whether or not as a matter of strict precedent they conclude this question, state the correct principle which we should follow.*

*Our reasons for reaching this conclusion are based upon essentially the same reasons as those given by Russell L.J. in the Hastings Car Mart case [1964] Ch. 665, 697 and by Professor Wade in the article, "Licences and Third Parties" (1952) 68 L.Q.R. 337, to which Russell L.J. refers. Before Errington the law appears to have been clear and well understood. It rested on an important and intelligible distinction between contractual obligations which gave rise to no estate or interest in the land and proprietary rights which, by definition, did. The far-reaching statement of principle in Errington was not supported by authority, not necessary for the decision of the case and per incuriam in the sense that it was made without reference to authorities which, if they would not have compelled, would surely have persuaded the court to adopt a different ratio.”*

76. Accordingly, I conclude that Karen's bare licence to occupy the Property did not create any estate in land, proprietary right or interest capable of being an overriding interest within s.28 of the Registered Land Act.

***E.3 Karen's status between October 2004 and David's death in April 2013***

77. As set out earlier in this judgment, Harvey asserts that:

*"[Karen] continued residing in the property with permission to do so."*

It is necessary to consider this argument carefully because, if Karen occupied with David's and Harvey's permission as Harvey alleges, then her occupation cannot have been adverse; on the other hand, if David and Harvey merely acquiesced in her occupation, then her occupation can have been adverse to their title.

78. Mr Merren relied on *Megarry & Wade* at 7-028 and following. Relevantly, the learned authors say this (footnotes and citations omitted), which provides a useful summary of the applicable principles:

*"7-028 ... Dispossession does not therefore require an ouster of the owner. Discontinuance occurs where the owner abandons possession of the land. It is thus not necessary that the owner should have been driven out of possession. If the owner abandons possession, or if the owner dies and the person next entitled (e.g., as devisee or remainderman) does not take possession, time will begin to run as soon as adverse possession is taken by another. What matters is not how the owner ceased to be in possession, but that some other person has taken possession that is adverse to that owner's title. ..."*

*7-029 ... 'adverse possession' ... means possession inconsistent with and in denial of the title of the owner of land and not, e.g. possession under a licence or under some contract or trust. There is a presumption that the owner of the land with the paper title is in possession of the land. To establish adverse possession, a squatter must prove both factual possession of the land and the requisite intention to possess (animus possidendi). If a person is in possession of land with the permission of its owner, his possession cannot be adverse. That permission may be expressly given or it may be implied. The circumstances in which it will be implied have not yet been finally determined. ... it has been contended (but not decided) that permission in the context of adverse possession requires a communication to the licensee, whether by writing, spoken words or conduct, that was intended to be and was understood as permission to do what would otherwise be trespass. Nevertheless, the propositions set out above in relation to the possibility of implied consent have been accepted as a correct statement of the law. The Privy Council has held that permission can be implied, but need not be acknowledged by S; it is doubtful whether it has to be shown that S understood the relevant words or conduct to amount to permission. Possession with permission, which can never be adverse, is quite different from possession in which the landowner acquiesces, which may be adverse. ..."*

79. The case before the Privy Council to which *Megarry & Wade* refers is *Smith v Molyneaux* [2016] UKPC 35, an appeal from the British Virgin Islands. Dame Mary Arden, giving the opinion of the Board, said:

*"28. As explained, the Court of Appeal took the view that permission could not be given unilaterally by the owner of land and that it required to be acknowledged by the occupier. At the hearing of this appeal, the Board drew the parties' attention to the decision of the Court of Appeal of England and Wales in *BP Properties Ltd v Buckler* (1987) 55 P & CR 337, which was not cited to the Court of Appeal in this case. This case decides that it is sufficient that permission is given*

*unilaterally. There, shortly before the expiry of the 12-year limitation period, the owner of land out of the blue wrote to Mrs Buckler, a former tenant who was continuing to occupy rent-free a house on the land, in which it granted her permission to live there for the rest of her life. Dillon LJ, with whom Mustill LJ and Sir Edward Eveleigh agreed, held that the crucial question in this situation was what the owner did and not what the squatter intended and, in addition, that she did not need to accept the terms of the licence:*

*“The nature of Mrs Buckler’s possession after receipt of the letters cannot be decided just by looking at what was locked up in her own mind. It must depend even more, on this aspect of the case, on the position as seen from the standpoint of the person with the paper title. What could that person have done? The rule that possession is not adverse if it can be referred to a lawful title applies even if the person in possession did not know of the lawful title; the lawful title would still preclude the person with the paper title from evicting the person in possession. So far as Mrs Buckler was concerned, even though she did not ‘accept’ the terms of the letters, BP Properties Ltd. would, in the absence of any repudiation by her of the two letters, have been bound to treat her as in possession as licensee on the terms of the letters. They could not have evicted her (if they could have done so at all) without determining the licence.*

*I can see no escape therefore from the conclusion that, whether she liked it or not, from the time of her receipt of the letters, Mrs Buckler was in possession of the farmhouse and garden by the licence of BP Properties Ltd, and her possession was no longer adverse within the meaning of section 10 of the 1939 Act.”*

*29. The parties accepted that the same principle must apply to the permission which will prevent a person acquiring land through adverse possession under section 135(1) of the Registered Land Act.”*

80. I draw from this, and from the summary of the law in *Megarry & Wade*, that the owner of the paper title may stop the occupier’s possession of the land in question being adverse by granting a licence to the occupier. The occupier need not agree to the grant of the licence for this to be effective. However, the second paragraph in *BP Properties Ltd v Buckler* quoted with approval by Lady Arden, states that Mrs Buckler’s possession ceased to be adverse “*from the time of her receipt of the letters*”. Thus, I conclude, there must be a communication to the occupier of the grant of the licence for it to have effect. That this is a requirement makes objective sense because, amongst other things, it avoids the possibility that a paper owner could always defeat a claim for adverse possession by declaring that they had granted the occupier a licence without having to demonstrate the contemporaneous communication of that licence to the occupier.
81. I therefore turn to the evidence regarding the alleged permission for Karen to occupy the Property over this period. As recorded earlier in this judgment, Harvey’s evidence is that he did not give Karen permission to occupy the Property – indeed he has never done so. Harvey said that Karen had appealed to David’s sympathy and as a result she continued to reside in the Property. Harvey himself had deferred to David’s wishes. It seems that Harvey intends to imply that David must have given Karen permission to occupy. However, he was unable to say whether David had done so and there is no

evidence to show that he did. At paragraph 16 of her third affidavit, Karen denies that David or Harvey ever gave her permission to occupy the Property. She was not challenged on this in cross-examination and I accept this evidence.

82. Harvey's case is that he and David requested that Karen pay rent, which she refused to do. Karen denies that any such conversations took place until after David's death and were with Harvey alone. Nevertheless, on Harvey's own case, he did not authorise Karen's occupation and the inference is that he and David tolerated the position rather than approving it.

83. In light of this evidence, I conclude that at no time between 26 October 2004 and April 2013 was Karen's occupation of the Property authorised by David and Harvey; rather it appears that they simply acquiesced in her occupation, I infer that this was because they did not want to have to deal with her resistance to paying rent or vacating the Property.

#### ***E.4 Karen's status after April 2013***

84. It is clear from the summary of the evidence regarding the period after April 2013 that Karen's continued occupation of the Property was against Harvey's wishes. In my judgment, Karen's possession of the Property continued to be adverse to Harvey's paper title throughout the period from April 2013 to her commencement of these proceedings in July 2018.

#### ***E.5 The nature of Karen's occupation***

85. It is well established that for a claim for adverse possession to succeed, the claimant must show both that she was in actual possession and that she had an intention to possess the property during the relevant period.

86. In this case:

86.1 It is obvious on the evidence that Karen was in actual occupation of the Property to the exclusion of David and Harvey at all times from 26 October 2004 onwards.

86.2 Karen's evidence is equally firm that she always intended to treat the Property as her own. This is supported by her uncontradicted evidence that she paid all the bills, was responsible for ongoing maintenance, and carried out alterations to the Property, all without any contribution from or reference to Harvey or David.

87. Karen's intention to treat the Property as her own to the exclusion of whoever was entitled to legal title to the Property is supported by the fact that Harvey did not have keys for it and that Karen refused to pay rent or to vacate the Property in response to Harvey's requests that she do so.
88. In my judgment, it does not matter that Karen was unaware until 2016 that the Property had been registered in the names of David and Harvey in January 2006. It is apparent that her intention was to occupy the Property to the exclusion of others (save for her own licensees), whoever might be the true owner following Coriel's death.

***E.6 Conclusion on possessory title issue***

89. For the reasons set out, I conclude that Karen had adverse possession of the Property from 26 October 2004 until the commencement of these proceedings in July 2018, a period of more than 13 years. It follows that she has had adverse possession of the Property for more than the statutory period required of 12 years, with the result that by operation of s.135 of the Land Registration Act, Harvey is deemed to hold title to the Property on trust for her, and Karen is entitled to have title registered in her own name.

***E.7 Proprietary estoppel / constructive trust claims***

90. In light of my conclusion on the question of Karen's possessory title, it is not necessary for me to consider her alternative claim based on proprietary estoppel or constructive trust. Nevertheless, I will briefly set out my views on these claims.
91. Firstly, as recorded at the outset of this judgment, these claims were not actively advanced before me in argument. I consider that Mr Merren was correct not to do so. Karen's evidence was that there was no formal agreement between her, Coriel and Colleen that Karen should provide care in return for the right to live in the Property. In addition, Karen denied that she acted as a carer. This does not support the alleged existence of a proprietary estoppel or trust in Karen's favour.
92. The second possible basis for these claims might the statements made by Coriel after Colleen's death that Coriel wished to put the Property into Karen's name (along with others) to reward her for the care she had provided to Coriel and Colleen over the years. Such claims face similar difficulties in that Karen denies that she acted as a carer, rather than simply helping around the house in the normal

way. In addition, there cannot have been any detrimental reliance by Karen on such a statement – any relevant care that she had provided was provided before the statements were made and there is no evidence that she acted to her detriment at any time in reliance upon Coriel’s stated intention that Karen should have an interest in the Property. Further, Karen says that her reaction was that it was a matter for Coriel, which is also inconsistent with there being any reliance by Karen on the statements.

93. I would therefore have rejected Karen’s alternative case if it were a live issue.

***E.8 Costs and consequential matters***

94. For the reasons set out, I determine the questions set out in the originating summons as follows:

94.1 The statutory limitation period for Harvey to recover possession of the Property has expired.

94.2 Harvey’s title to the Property is extinguished and Karen is entitled to title to the Property.

94.3 Harvey holds title to the Property on trust for Karen, pursuant to s.135 of the Registered Land Act.

94.4 Karen does not have any overriding interests in the Property.

95. I have been told that Harvey has had the benefit of legal aid to defend this claim. It follows that I cannot make a costs order in Karen’s favour as a result of the operation of Regulation 10(3) of the Legal Aid Regulations.

**Dated 15 April 2025**



**THE HONOURABLE JUSTICE JALIL ASIF KC  
JUDGE OF THE GRAND COURT**