



[2025] JMSC Civ. 13

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2022 CV00798

BETWEEN	CHARMAINE EMELINE BUCKLE	CLAIMANT
AND	DAVID ANDREW WRIGHT	DEFENDANT

Ms Marjorie Shaw, instructed by Brown & Shaw for the claimant

Miss Shernett Robinson instructed by Robinson White & Co. for the defendant

Heard: June 6 2023, and February 12, 2025

***Adverse possession - Joint tenancy - Extinction of title by one joint tenant -
Joint tenant claiming to have dispossessed co-tenant - Sections 3 and 30 of
the Limitation of Actions Act***

IN CHAMBERS

CORAM: JARRETT, J

Introduction

[1] The parties are former husband and wife. This claim concerns approximately ¼ acre of unregistered land, with house situated on it, jointly owned by them at Chudleigh called Savoy Crescent in the parish of Manchester (the property). The

issue before the court is whether Charmaine Emeline Buckle ('the claimant'), has dispossessed David Andrew Wright ('the defendant'), for more than twelve years before the commencement of the claim.

- [2] Since the House of Lords decision in **J A Pye (Oxford) Ltd and Another v Graham and Another [2003 1 AC 419]**, it is now settled, that in cases where the question is whether the legal owner of land has been dispossessed, what is decisive is the state of mind and the actions of the possessor. (See too the Privy Council decision in **Wills v Wills [2003] UKPC 84**). In the current claim therefore, it is the claimant's intentions and actions, which will be critical in determining whether she has dispossessed the defendant.

The claim

- [3] The claimant pleads in her fixed date claim form filed on March 7, 2022, that since 2004, she has been in control and/or possession of the property to the exclusion of the defendant. She therefore seeks the following remedies: -

“1. A Declaration that the Claimant has dispossessed the Defendant of his legal and/or beneficial interest in all that unregistered parcel of land part of **CHUDLEIGH** called **SAVOY CRESCENT** in the parish of **MANCHESTER** containing by estimation one-quarter ($\frac{1}{4}$) Acre being the same, more or less, butting and bounding Northerly, Southerly and Easterly by land in the possession of Murriel Wright, westerly by the Parochial Road leading from the Christiana to Huddersfield Parochial Road or howsoever otherwise the same may be butted bounded known distinguished or described and being that parcel of land described in the Facilities For Titles Act Certificate issued in favour of the National Trust dated February 15, 1999 (hereinafter described as “the subject property”).

2. Further, and/or in the alternative, for a Declaration that the Claimant has acquired by dispossession, any legal and or beneficial interest/title, held by the Defendant in the subject property.

3. Further, and /or in the alternative, an Order that registered title for the subject property be issued solely in the name of the Claimant and /or her nominee(s).

4. An Order that the Registrar of the Supreme Court is empowered to sign any and all documents to give effect to the Orders of this Honourable Court, if either of the parties is unable or unwilling to do so;

5. Any further relief, directions and/or Orders as this Honourable Court deems just in the circumstances.

6. Costs.”

The claimant’s evidence in support of the claim

[4] In her affidavit filed on March 7, 2022, in support of her fixed date claim form, the claimant says that she resides in Florida in the United States of America and is a health care worker. The defendant is her former husband. He resides in the Kansas in the United States of America and is a driver. During their marriage they acquired the property. By way of a National Housing Trust (‘NHT’) mortgage and her financial contribution, a small house was built on it. They separated in 2002, and she was left with the responsibility for paying the mortgage and caring for their young child. Shortly after the separation, she rented the property to enable her to pay the mortgage and to look after their child. As a result of proceedings initiated by the defendant, by a consent order (which the claimant exhibits), made on November 9, 2004, it was agreed that the property is held by them in equal shares.

[5] Among the consent orders made are orders that a certificate of title is to be obtained, the property is to be valued at a shared cost, the claimant is to have the first option to purchase the defendant’s 50% interest within 60 days of the valuation, and if she does not exercise that option and complete the purchase within 120 days after the defendant has signed the agreement for sale, then the defendant shall have the option to purchase the claimant’s 50% interest .

- [6] According to the claimant, she migrated to the United States and so did the defendant, but her elderly mother lives in Jamaica and so she travelled often to the island to see her mother and to oversee the property. Since her migration, she has discharged the mortgage, repaired the property at her own expense, appointed agents to manage the rental arrangements she approved, paid the property taxes and the utilities, without any participation from the defendant. At her sole discretion, she has also allowed the rent-free occupation of the property. She says she has been in possession and control of the property to the exclusion of the defendant. In or around the year 2019, after: “relinquishing his interest in the property for a period exceeding twelve (12) years”, the defendant wrote to her through his attorney-at-law, asking her to have discussions about valuing and dividing the property.
- [7] In her affidavit filed on November 4, 2022, the claimant says that the defendant serviced the mortgage by way of salary deductions until this was discontinued around 2007. When those deductions ended, she continued (even after she migrated in 2005), to almost single handedly maintain their child, maintain, improve and repair the property, pay the mortgage, the property taxes and all the utilities. According to her, when the defendant abandoned his family and the property in 2002, it was two months after she had given birth to their daughter and was in occupation of the property. There was no discussion had with the defendant either before or after he left, in relation to renting the property in order to pay the mortgage. She did not consult with him in respect of anything to do with the property, and he has not been in possession of the property since he left it in 2002. Since that time, she has enjoyed, peaceful and undisturbed possession.
- [8] Since the defendant left the property in 2002, the claimant says she has retained control, management and possession of it. At her sole discretion she has utilised any income generated from the property as she considers appropriate. After her migration to the United States of America, her sick mother and her caregiver occupied the property for about two years, during which time, she travelled frequently to Jamaica to assist with her mother.

[9] On cross examination, the claimant said that before she and the defendant migrated, they both contributed to the mortgage. She migrated two to three years before him. According to her, the consent order was not complied with. When asked whether she made any efforts to bring the order into effect, she said she was looking after her daughter and could not do it. She reached out to the defendant, but he did not respond. She denied that they had any discussion about rent from the property paying the mortgage. She said the house was rented: “on and off” and she added a bedroom and a bathroom, to maintain their daughter, as the defendant was not maintaining her. The defendant was nowhere to be found. She had no contact with him for many years and tried to contact him through family and friends. She admitted that the defendant contributed to the mortgage through salary deductions up to 2005. When her affidavit evidence of November 4, 2022, was brought to her attention, she said she does not remember whether the defendant’s salary deductions stopped in 2005 or 2007.

[10] The claimant said she did not share the rent for the property with the defendant and it was only once that he “appeared” and wanted to know the value of the mortgage. Approximately 60% of the time, the property was not rented, but every cent she received in rent, was used to pay the mortgage. According to her, the defendant abandoned the property and left her to figure out how to maintain it.

The evidence of the defendant in response

[11] The defendant filed an affidavit in response on July 29, 2022¹. He denies that the responsibility of caring for their daughter was left solely to the claimant, because at the time of their separation, the mortgage was being paid by salary deductions from both his salary and that of the claimant. He said it was agreed that the property would earn an income from being rented and the rent would pay the

¹ With no objection from the claimant, the defendant was permitted by the court to rely at trial on his affidavit filed on July 29, 2022, and to cure a defect in its jurat, by the filing an affidavit in its exact terms, on July 15, 2023.

mortgage. Furthermore, he said, he provided for his child. According to him, he contributed to the mortgage and always checked on the property to ensure that mortgage payments were up to date. He made several lump sum payments to NHT since 2018 when he was informed by the NHT that the mortgage was in arrears. Any attempt to have discussions with the claimant was pointless, due to her hostile attitude. He has been intentionally excluded from all decisions with respect to the property and has not relinquished his interest in the property as evidenced by his attorney-at-law's letter to the claimant, and his lumpsum payments to the NHT.

- [12]** On cross examination, the defendant said he moved out of the property in March 2002, and at the time his daughter was two months old. It was a hostile situation that led him to move out and it persisted after he moved out. He visited the property, but those visits only related to their daughter. He said all he and the claimant talked about after he moved out was their daughter and there was always extreme anger on the claimant's part whenever he mentioned the property.
- [13]** According to the defendant, he migrated in 2008, and deductions from his salary were being made up until that point. Between 2002 to this day, he says, his relationship with the claimant has not improved. He did not tell the claimant that he was leaving Jamaica, but there was some contact between them when he arrived in the United States of America. He made no arrangements with the claimant for the payment of the mortgage after he migrated. Since he migrated, he has not made any monthly mortgage payment, but he informed the NHT that if there were any delinquencies, he would deal with them. He made retroactive payments around 2019, and he has receipts to prove it. When asked how much he paid retroactively, he said he could not recall. He said he made these payments about two or three times.
- [14]** The defendant claims that for the majority of the period between 2008 and 2022, the property was rented. Save for 2018, when he said that the claimant's brother rented the property, he does not know who the tenants were, and he does not know the amount they paid in rent. Between 2008 and 2023, he has not had any

communication with any of these tenants, and he does not know whether in any given year the rent was able to cover the mortgage. According to him, he was not privy to such information as the claimant deprived him of it. When asked by cross examining counsel, how the claimant deprived him, the defendant said that no communication or negotiation came from her with respect to the property between 2008 and 2023. When asked if between 2008 and 2023 he paid any property taxes, the defendant said he could not recall, but the documents were submitted in evidence. When he was pressed further, he admitted that there are no such documents in evidence. He agreed that between 2008 and 2023 he did not engage anyone to maintain the property. When asked if he was aware of the changes made to the property by the claimant, he said he had seen the additions that were made.

Analysis and discussion

[15] As alluded to before, the issue in this case is whether the claimant has dispossessed the defendant from the property and thereby extinguished his title as a joint tenant. There is in my view, no better starting point to the analysis, than the dicta of Sykes J in **Lois Hawkins (Administrator of the Estate of William Walter Hawkins, Deceased, Intestate) v Linette Hawkins McIniss [2016] JMSC Civ 14**, Sykes J (as he then was) helpfully summarised the law in this area by adopting the dicta of McDonald Bishop JA (Ag) (as she then was) in **Fullwood v Curchar [2015] JMCA Civ 37**, at paragraph 12 of his judgment :

“[12] The law in this area is no longer in doubt. It was most recently expounded by the Court of Appeal in **Fullwood v Curchar [2015] JMCA Civ 37**. This court cannot improve on the clarity, precision and exposition of McDonald Bishop JA (Ag). The court will simply refer to paragraphs [29] to [54]. From these passages the following propositions are established:

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

- (vii) when a person brings an action for recovery of possession then that person must prove their title that enables them to bring the recovery action and thus where extinction of title is raised by the person sought to be ejected, the burden is on the person bringing the recovery action to prove that his or her title has not been extinguished thereby proving good standing to bring the claim;
- (viii) the reason for (vii) above is that the extinction of title claim does not simply bar the remedy but erodes the very legal foundation to bring the recovery action in the first place;
- (ix) dispossession arises where the dispossessor has a sufficient degree of physical custody and control over the property in question and an intention to exercise such custody and control over the property for his or her benefit;
- (x) the relevant intention is that of the dispossessor and not that of the dispossessed;
- (xi) in determining whether there is dispossession there is no need to look for any hostile act or act of confrontation or even an ouster from the property. If such act exists it makes the extinction of title claim stronger, but it is not a legal requirement;
- (xii) the question in every case is whether the acts relied on to prove dispossession are sufficient.”

[16] In cross examination, the defendant essentially made out the case for the claimant, at least in relation to the period 2008 to the filing of the claim in March 2022. He

said quite plainly, that during the period 2008 to 2023, the claimant had excluded him from the property and had deprived him of any information in relation to it. The claimant's own evidence was that since the deductions from the defendant's salary ceased (she said this was around 2005 or 2007, but could not recall the exact year), he made no contributions to the monthly mortgage payments, the taxes or the maintenance of the property. In fact, she said that from the time the defendant abandoned her and their newborn baby in 2002, until she filed her claim, she controlled, managed and possessed the property as if it belonged solely to her, and without any involvement from him. The defendant himself admitted that he did not make any of the monthly mortgage payments between 2008 and 2023, and despite saying that he had paid the property taxes, he had no documentary proof to support this assertion. On both the claimant's evidence and that of the defendant, it is evident that the claimant rented the property from time to time without giving any information about the rentals to the defendant, and without accounting to him. The defendant admitted he knew none of the tenants (save for the claimant's brother), and did not know how much rent was paid by any of them. The claimant expanded the house on the property, without any regard to, or involvement of the defendant, whose only response when cross examined about this expansion was that he had seen it.

- [17]** The defendant alleged in his affidavit evidence that there was an agreement with the claimant for the property to be rented and the rent applied to the monthly mortgage payments. He also claimed to have checked in on the property to see whether the mortgage was being paid. But this evidence was indisputably contradicted by him in cross examination. In cross examination he said that there was no communication had with the claimant about the property since he left the home in 2002, as: "the situation was hostile". He also gave no evidence of whom he "checked in" with in relation to the property. I find his evidence hardly credible, and on a balance of probabilities, find that he made no such checks and that there was no agreement between him and the claimant for the property to be rented and the rent applied to the mortgage.

[18] It is also clear from the evidence that since the defendant left the property in March 2002, he has not returned to it. It is remarkable that he claims to have made an oral arrangement with the NHT to pay any 'delinquencies' when they arose but could provide no documentation to support this. I do not find this evidence in the least credible. It is unlikely that a mortgagee would engage in such a verbal arrangement with a mortgagor. Furthermore, no evidence was given by the defendant as to whom he communicated with, and when. The defendant could also not recall on cross examination how much he had paid to the NHT under this arrangement. In his affidavit filed on July 29, 2022, he referred to receipts which he claimed he received from NHT for retroactive payments he made, but no such receipts were exhibited to his affidavit filed on July 29, 2022. Without seeking the court's permission to include these exhibits in a further affidavit, copies of two NHT receipts were exhibited to the defendant's July 15, 2023, affidavit. By my order, this affidavit, was to be filed solely to cure the defects in jurat of the earlier affidavit. One receipt is dated November 6, 2018, in the sum of \$100,000.00 and the other is dated February 22, 2019, in the sum of \$45,000.00. With these documents not agreed and having been filed after the hearing, without the permission of the court, I shall have no regard to them.

[19] I find it significant that the defendant while admitting that he was excluded from the property and deprived of any information in relation to it, did not seek to return to court to enforce the consent order. In my view, the letter (which was not exhibited), written in 2019, by the defendant's attorney-at-law to the claimant, seeking to have discussions about getting the property valued and divided, did not disturb time running in the claimant's favour so as to disrupt her possession. There is no evidence that the claimant complied with the letter, and in fact, the evidence indicates otherwise. I would have held the same view in relation to the two NHT payments, allegedly made in November 2018 and February 2019, if they had been properly before the court. There is no evidence that the claimant was aware that these two payments were made or that they influenced her intention to exercise physical control and custody over the property for her sole benefit. In fact, it is

evident that despite the defendant's counsel's letter, the claimant continued to totally exclude the defendant from the property up to the time of filing the claim. As the authorities referred to earlier have established, in cases such as this, it is the possessor's intentions and actions which are decisive, and not those of the dispossessed.

Conclusion

[20] In the circumstances, I find, on a balance of probabilities that the claimant has demonstrated a sufficient degree of physical custody and control over the property along with an intention to exercise such custody and control over it, for her sole benefit, from 2008 to the date of the filing of the claim. In the result, I make the following declarations and orders: -

- 1) It is declared that the claimant has dispossessed the defendant of all his interest in all that unregistered parcel of land part of **CHUDLEIGH** called **SAVOY CRESCENT** in the parish of **MANCHESTER** containing by estimation one-quarter ($\frac{1}{4}$) Acre being the same, more or less, butting and bounding Northerly, Southerly and Easterly by land in the possession of Murriel Wright, westerly by the Parochial Road leading from the Christiana to Huddersfield Parochial Road or howsoever otherwise the same may be butted, bounded, known, distinguished or described, and being that parcel of land described in the Facilities For Titles Act Certificate issued in favour of the National Trust dated February 15, 1999.
- 2) The registered title for the subject property be issued solely in the name of the claimant and /or her nominee(s).
- 3) The Registrar of the Supreme Court is empowered to sign all documents required to give effect to the orders made herein, if the defendant is unable or unwilling to do so.

4) Costs to the claimant to be agreed or taxed.

A Jarrett
Puisne Judge