



[2021] JMSC Civ.167

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2018 HCV02397

IN THE MATTER OF an Application No. 2075875 for registration of an instrument with land comprised in Certificate of Title registered at Volume 1378 Folio 431 of the Register Book of Titles

AND

IN THE MATTER OF section 140 of the Registration of Titles Act

AND

IN THE MATTER OF Caveat No. 1893398

AND

IN THE ESTATE OF Edward Theophilus Hall late of Hillside District in the parish of Manchester, Farmer, deceased, intestate

BETWEEN

LYNETTE VASELL

CLAIMANT

AND

WINSTON HALL
(Executor of Estate Israel Hall)

1st DEFENDANT

Vassell Administratrix and Beneficiary of Estate Edwards Theophilus Hall.

2. That the Claimant Lynette Vassell is the Administratrix and Beneficiary under the estate of Edward Theophilus Hall and as such has a beneficial interest in the said lands comprised in the Certificate of Title registered at Volume 1378 and Folio 431.
3. That the Registrar of Titles is to endorse on the Certificate of Title registered at Volume 1378 Folio 431 the Claimant's beneficial interest in said lands.
4. That the 1st and 2nd Defendants are prohibited from dealing with or otherwise disposing of the property registered at Certificate of Title registered at Volume 1378 Folio 431 being the same lands comprised in the will of Israel Hall dated the 4th of August 1986.
5. That the 3rd Defendant is restrained and prohibited from trespassing onto the said lands registered at Certificate of Title registered at Volume 1378 Folio 431.
6. Costs
7. Such further and other relief this Honourable Court deems fit.

[2] On the 14th of May 2019 the Claimant discontinued the claim against the First and Second Defendants.

Background

[3] The Claimant (Ms. Lynette Vassell) avers by way of Affidavits that she is entitled to a beneficial interest in the subject property as the land was previously owned by her father who died intestate on the 7th of May 1970. Her brother, Israel Hall, obtained Letters

of Administration in the Estate of her father on the 20th of May 1982. He died prior to distributing that estate. Israel Hall left a will, however there was no mention of his father's estate in that document. As a result, Ms. Vassell obtained a Grant of Administration De Bonis Non in the estate on the 27th of October 2017. She was advised of a Notice to Caveator dated the 21st of May 2018. The basis of the caveat was a Notice of Application on behalf of The 3rd Defendant (Mrs. Lewis) to register herself as proprietor of a portion of the said lands. The application was predicated on the doctrine of adverse possession. Ms. Vassell strongly denied that Mrs. Lewis was in possession of the lands and she therefore seeks the Court's intervention.

[4] Mrs. Lewis tragically did not live to see the outcome of this matter, and her daughter Sandra Lewis was appointed as her legal representative. Prior to her death, she deposed to three affidavits which are relied on in her defence of this matter. In those affidavits she indicated that a half acre of the disputed land was sold by Israel Hall to her husband and herself. The sale was evidenced by an agreement in writing which she has exhibited to her affidavit. The sale was not completed due to the death of Mr. Hall. Mrs. Lewis and her husband despite this setback made further payments to the son of Mr. Hall, and her husband obtained subdivision approval for the land. She also avers that they paid taxes on the land over the years as they saw themselves as the owners of the property, the certificates of payment of taxes were also exhibited.

[5] She made an application to have the land registered under Section 85 of the Registration of Titles Act after her husband died. In that application she referred to the agreement for sale but relied predominantly on her occupation of the half acre lot to the exclusion of all others for a period in excess of twelve years. It is her contention that she has an equitable interest in the half acre lot.

Issues

- [6] a) Does Ms. Vassell have a beneficial interest in the subject property?
- b) Did Mrs. Lewis have an equitable interest in a half acre lot, part of the property belonging to Edward Hall?

Does Ms. Vassell have a beneficial interest in the subject property?

Discussion and Analysis

[7] Ms. Vassell claims as a beneficiary under the estate of her deceased father. The subject property in dispute is registered at Volume 1378 Folio 431 of the Register Book of titles in the name of Edward Hall. The date of registration is the 24th of September 2004 (the significance of this date will become relevant later in this judgment). A registered title is conclusive proof of the fact that the registered proprietor is the owner of the land as described. The subject property, therefore, forms part of the estate of Edward Hall. Ms. Vassell is the administrator of the estate under the Grant of Administration De Bonis Non. By virtue of **Section 3 (1) of The Real Property Representative Act** the land is now vested in her as the personal representative of the estate.

[8] As the personal representative Ms. Vassell holds the land in trust for the beneficiaries of the estate pending the completion of the administrative process.¹ The effect of this provision was explained in the case of **George Mobray v. Andrew Joel Williams**². Harris JA in delivering the judgment referred to the case of **Re Leigh's Will Trust**³ where Buckley J opined that in **Commissioner of Stamp Duties (Queensland) v Livingston** it was stated that **"the entire ownership of the property comprised in the estate of a deceased person which remains unadministered is in the deceased's legal personal representative for the purposes of administration without any differentiation between legal and equitable interests."**

[9] It is the finding of this court, upon an examination of the evidence that Ms. Vassell, in accordance with the Grant of Letters of Administration De Bonis Non which was made

¹ Section 5 (1) of The Real Property Representative Act

² [2012] JMCA Civ. 26 para. 26

³ [1969] 3 All ER 432 at 434

on the 27th day of October 2017, was vested with the property registered at Volume 1378 Folio 431 of the Register Book of Titles.

Did Mrs. Lewis have an equitable interest in a half acre lot, part of the property belonging to Edward Hall?

Submissions on behalf of Counsel

The 3rd Defendant

[10] The evidence relied on by Counsel on behalf of Mrs. Lewis is two-fold. Firstly, Counsel submitted that the agreement for sale is evidence of an agreement between Israel Hall, the former personal representative of the estate of Edward Hall, and Mr. and Mrs. Lewis. In the event that the court does not agree with that position, the court is open to a consideration of the acts of part performance made by Mr. and Mrs. Lewis, that is, the payment of taxes, applying for and obtaining sub-division approval and the receipts evidencing payment of money towards the purchase price. Those acts are sufficient to show that there was in fact an agreement between the parties, and the agreement, is evidence of an equitable interest in the half acre of land on the part of Mrs. Lewis.

[11] Secondly, Counsel suggested that there was evidence supporting the contention that Mrs. Lewis was in open undisturbed occupation of the half acre lot since the signing of the agreement in 1984, and, that she had the intention to possess the land as her own. As such, Ms. Vassell was estopped from bringing this claim, as the action was now statute barred.

Claimant

[12] In contrast Counsel on behalf of Ms. Vassell submitted that the agreement for sale does not establish the 3rd Defendant's interest in the property. He highlighted the following reasons:

- a) The agreement offends the prohibition against disposal of expectancy of a beneficiary by assignment. He argued that Israel Hall was

attempting to dispose of his own beneficial interest in the property as a beneficiary in his father's estate. Mr. Hall's failure to indicate that he was the administrator of his father's estate in the preamble to the agreement for sale as well as his attempt to have the balance of the purchase price used for his funeral expenses as per his will was proof of his belief that the portion he was attempting to sell was in fact his. As a beneficiary he did not have the capacity to sell the half acre of land as it was merely a chose in action.

- b) The full purchase price was not paid by Mrs. Lewis and would only give her an equitable lien over the property and as such her relief would be in damages.
- c) The agreement for sale is statute barred per Section 25 of the Limitations of Actions Act.
- d) Mrs. Lewis did not sign the agreement for sale.

Discussion and Analysis

[13] It is a well-established principle of law that a registered title is indefeasible. It can however be challenged on two grounds a) fraud and b) a right of possession. In this case Mrs. Lewis's claim is based on the latter. The evidence before the court is that she made an application to the Registrar of Titles to be registered as owner of a half-acre lot part of the property comprised in Certificate of Title registered at Volume 1378 Folio 431 of the Register Book of Titles. Her application was based on Section 85 of the Registration of Titles Act which provides: **"Any person who claims that he has acquired a title by possession to land which is under the operation of this Act may apply to the Registrar to be registered as the proprietor of such land in fee simple or for such estate as such person may claim"**.

[14] Mrs. Lewis has the burden of proving that she has an equitable interest in the disputed property. As per the dicta of Harris JA, **“A claim to an interest in land must be valid. Such claim must be anchored on secure foundation. Where a bona fide dispute as to title is advanced, a defendant cannot merely raise the issue. He must go further. There must be adequate evidence in support of his contention to show that the issue as to title raised by him is sustainable. It follows that an issue as to equitable interest can only be determined after cogent evidence is adduced to satisfy the court that, on the balance of probabilities, the defendant is entitled to such an interest.”**⁴

[15] In her application to the Registrar, Mrs. Lewis made mention of the agreement for sale that she indicated had been completed and she also relied on her continued occupation of the land to the exclusion of all others for the requisite period of twelve years. A claim to adverse possession cannot be joined with a claim to the right of ownership as the two are diametrically opposed. In essence Mrs. Lewis could not claim that she is the owner by way of an agreement for sale and, that she has alienated the true owner of the land by reason of her continued occupation. Nonetheless, I will examine both issues raised on her behalf by Counsel.

[16] Israel Hall as the administrator of Edward Hall’s estate had the capacity to sell the portion of land since it formed a part of his father’s estate. As the administrator the assets of the estate were vested in him. He did not need to confer with or seek the permission of the other beneficiaries to do so. It is for this reason that counsel for the Claimant posited that he did not sell the land in his capacity as administrator but that he sold the land erroneously under the belief that it was his personal property.

[17] As a beneficiary in his father’s estate he had no legal right to the property and thereby could not sell the land to anyone. Counsel is asking the court to draw the

⁴ Supra. 2. Para. 18

inference that his thought process was as a beneficiary and not as an administrator. The agreement for sale was drafted by an attorney based on the exhibit presented to the court. In fact, that attorney, had the carriage of sale and participated in collecting monies on behalf of Mr. Hall. The failure to note that Mr. Hall was acting in his personal capacity on the agreement for sale, and the reference to the remainder of the proceeds of sale in his will cannot, in and of itself, lead this court to find that he was acting in his beneficial capacity as opposed to an administrative one. There is nothing, other than those two acts on the part of Israel Hall, to suggest that he had an intention to sell the property as if it was his own. Those two acts could be explained in another way. Simply put, it could also be argued that he received bad advice from his attorney. Without more, I cannot find on a balance of probabilities, that he sold the land in any other capacity except that of the administrator of the estate.

[18] As to the issue of the purchase price, the evidence contained in the affidavits of Mrs. Lewis is conflicting. On one hand she indicated that the purchase price was paid in full, on the other she said that it was not. Her affidavit referred to a payment of thirty thousand dollars for which she provided a receipt. The receipt however did not state that the payment was to be applied to the purchase price. It indicated that the money was for the purpose of paying outstanding taxes.

[19] Having failed to complete the purchase price where does that leave Mrs. Lewis. The terms of the agreement are clear the balance of the purchase price is to be paid when title is delivered. This has not yet been done. The contract has been breached. Can Mrs. Lewis obtain specific performance in these circumstances?

[20] The quest for specific performance is fraught with its own challenges. Primarily because, on the face of the agreement for sale, Mrs. Lewis is not a party to the agreement. Her signature was not affixed to the document. Although her name was mentioned in the preamble as purchaser holding the land as joint tenants with her husband, this is not enough to make her a party to the agreement. Further, the receipts of payment for the land is in the name of her husband Sydney Lewis. The doctrine of privity of contract would therefore prevail. There is in fact no claim for specific performance before this court and

I find as a fact that such a claim could not be sustained, based on the evidence, in order to give Mrs. Lewis an equitable interest in the half acre lot.

[21] The court therefore can only make a determination on this matter based on her claim of a possessory right often referred to as adverse possession. The principle of adverse possession arises as a result of **Section 3 of the Limitation of Actions Act**. Section 3 provides the time frame within which a person can bring a claim to re-enter upon lands, recover possession, or rent. The occupier must be in possession of the land, undisturbed, for the minimum statutory period in order to claim a title to land based on adverse possession. The statutory period is that of twelve years from the date when the right first accrued.

[22] In the Privy Council decision of **Wills v. Wills**⁵ it was held, that the two elements necessary to establish possession are, (1) a sufficient degree of custody and control (factual possession) and, (2) an intention to exercise such custody and control on **one's own behalf and for one's own benefit** (my emphasis) (the intention to possess). It is not necessary to show that there was a deliberate intention to exclude the paper owner or the registered proprietor. The only intention which has to be demonstrated is an intention to occupy and use the land as one's own.

[23] It was submitted on behalf of the Claimant that the element of factual possession has not been established. The land is vacant, there are no buildings and no fences. It was argued that neither the 3rd defendant nor her husband actually occupied the land. Although Counsel accepted that a road was cut on the land, it was argued that this was done recently and therefore, would not satisfy the statutory requirement as to time.

[24] The evidence of possession was contained in the Second Affidavit of Mrs. Lewis filed on the 22nd of October 2019. It is observed that all references to factual possession were in relation to the actions of Mr. Lewis. Mrs. Lewis referred to her husband entering

⁵ [2003] UKPC 84

upon the land to de-bush and to fence it. She does not indicate whether she was there at the time, neither does she say how often these acts occurred. There is also no evidence as to her own entry on the land. The person seeking to establish a claim to land on the principle of adverse possession must do so based on their **own** (my emphasis) actions.

[25] As to the issue of intention. Once again, Mrs. Lewis relied on the actions of her husband. It was he who paid for the purchase of the land as evidenced by the receipts, it was he who applied for and obtained subdivision approval and, it was also he who paid the taxes up until his death. Mrs. Lewis's affidavit refers to her taking over the payment of taxes in 2016. Her only act, which could be considered as conclusive evidence of her belief that the land was her own, occurred in 2009 when, she permitted the entry of one Andrew Francis on to a section of the land to farm it in exchange for a portion of the produce that he reaped.

[26] Even if the court was to regard that as evidence of physical possession and intention, that only occurred in 2009. This year is significant because as mentioned previously the title to the entire property including the half acre lot was issued on September 24, 2004. First registration under the Registration of Titles Act extinguishes any prior equitable claims to land. As such the acts of the Lewis's prior to this date cannot be relied on as evidence in support of Mrs. Lewis's equitable claim of possession. It is clear from the agreement for sale that there was no title to the land as at the date of execution of the agreement. The description of the land does not make any reference to a Volume and Folio number. The title which was exhibited to the Affidavit of Ms. Vassell bears the year 2004. There was no other title put before this court.

[27] The year of reckoning then in accordance with the Limitation of Actions Act was 2004, that is the date the personal representative of the estate of Edward Hall would have first had the right to bring an action in respect of the half acre lot. Evidence was put before this court that Ms. Vassell knew of the agreement for sale and made no effort to act upon it. It is important to note that Ms. Vassell did not have a right to re-enter the property or to bring a claim in respect of the property until she was granted the Letters of Administration De Bonis Non in 2017. As such, even if the court accepts the evidence of Mrs. Lewis as

to the use of the land by her since 2009 she would not have attained the required period of twelve years. By her own evidence she would only have been in occupation for a period of nine years up to the point when this claim was filed.

[28] Mrs. Lewis has therefore failed to provide cogent evidence to support her challenge to the registered title and has not established that she has an equitable interest in the half acre lot.

What is the effect of a caveat that has lapsed?

[29] Before concluding on this matter I wish to address a point raised by Counsel Ms. Samuels. It was submitted that the court has no jurisdiction to grant the orders sought as the caveat lodged in accordance with Section 140 of the Registration of Titles Act has lapsed. She relied on the authority of **George Anthony Hylton v. Georgia Pinnock, Lloyds Property Development Limited and Lloyd E. Gibson.** ⁶ The judgment was delivered by Phillips JA who stated at paragraph 29 (iv):

“A caveat is not an interest in land. It does, however, protect the Caveator’s undetermined interest in the property. It gives the caveator the right to relief given by the court under that section so that he may have his interest determined. If the caveat has lapsed, there is no caveat in place and therefore no basis upon which the court can grant any relief or order sought under the section.”

[30] In this case the land vests in the administrator of the estate of Edward Hall. There is no undetermined interest that needs to be protected. The caveat was lodged in the event that any one tried to sell or deal with the property without notice to the administrator. The application made by the 3rd defendant was not to sell land but to be registered as an owner by virtue of adverse possession.

⁶ [2011] JMCA Civ. 8

[31] Ms. Cherie Walcott the Registrar of Titles gave evidence in this matter. She indicated to the court that the caveat lapsed on June 15, 2018, as she had not received an order from the court. She accepted that she was duty bound by law to register the dealing of Mrs. Lewis after that date. When asked if she had done so her response was, *“No before the dealing could be registered I was served with an injunction staying process any further.”*

[32] Even though the caveat had lapsed, an injunction was granted by the court preventing the 3rd defendant from registering any dealings with the land and delaying the Registrar from registering the application for title. The injunction was extended on several occasions by the court until the 20th of November 2019. There was no indication on the minute of order that the inter-parties hearing was conducted and since that date there was no reference to the injunction.

[33] What is pellucid is that the matter is currently before the Court, and the Claimant has made an application for a declaration as to her interest in the land. If the Registrar proceeds to register the land in accordance with the section and the court makes an order which does not support that registration wouldn't the Claimant be entitled to relief? The court has the inherent jurisdiction to determine the interests of the parties where there is a dispute as to land. This is such a case. Section 158 (2) of the Registration of Titles Act provides the following:

“In any proceeding at law or equity in relation to land under the operation of this Act the court or a Judge may, upon such notice, if any, as the circumstances of the case may require, make an order directing the Registrar- (a) to cancel the certificate of title to the land and to issue a new certificate of title and the duplicate thereof in the name of the person specified for the purpose in the order; or (b) to amend or cancel any instrument, memorandum or entry relating to the land in such manner as appears proper to the court or a Judge”.

[34] In the circumstances therefore I am of the view that the Court does have the jurisdiction to determine this matter based on the evidence and to make a finding as to fact in order to satisfy a claim.

Conclusion

[35] The Claimant has established that she is the administrator of the estate of deceased Edward Hall and therefore is vested with the property registered at Volume 1378 Folio 431.

[36] The 3rd Defendant has failed to establish that she holds an equitable interest in the property registered at Volume 1378 Folio 431 so as to defeat the title of the proprietor.

Orders:

1. The Registrar of Titles is prohibited from registering Application No. 2075875 made by Thelma Louise Lewis to become the registered proprietor of any portion of the said lands comprised in Certificate of Title registered at Volume 1378 Folio 431.
2. The Claimant as the Administrator by way of a Grant of Administration De Bonis Non is vested with the property comprised in Certificate of Title registered at Volume 1378 Folio 431.
3. The 3rd Defendant's heirs and assigns are restrained and prohibited from trespassing onto the lands comprised in Certificate of Title registered at Volume 1378 Folio 431.
4. Costs to the Claimant to be agreed or taxed.