



[2018] JMSC. Civ 16

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. CL C329 OF 1999

BETWEEN	NELDA CROOKS	CLAIMANT
AND	CONROY WHITELOCK	DEFENDANT

IN OPEN COURT

Mr Canute Brown instructed by Brown, Godfrey & Morgan Attorneys-at-Law for the Claimant

The Defendant being self represented

16th January and 9th February 2018

Trespass – Who may bring claim – Registered title by description - Construction of descriptive words in context of other evidence

LAING, J

The Claim

[1] On 13th December 1999, Ms Nelda Crooks the Claimant, then referred to as Plaintiff, by Writ of Summons initiated a claim against the Defendant for damages for trespass to land at Belmont Settlement in the parish of St James registered at Volume 1094 Folio 740 of the Register Book of Titles (“the Property”). The Claimant also sought other relief including, a declaration that the Defendant is not entitled to enter upon the Property and to construct a building. An injunction preventing the acts of trespass complained of was also sought.

[2] The Claimant asserted that she is an owner in possession of the Property, the registered title of which is in the name of her now deceased mother, Linda Crooks. At the trial no issue was raised as to the Claimant's authority to maintain the claim. However, to the extent that it was not admitted in the amended defence that the Claimant is the owner in possession, I think it is prudent at the outset to address that issue. In this regard, helpful assistance may be found in the case of **Wuta-Ofei v Danquah** [1961] 3 All ER 596 at 600 where the Privy Council made the following observation:

"Their Lordships do not consider that, in order to establish possession, it is necessary for a claimant to take some active step in relation to the land such as enclosing the land or cultivating it. The type of conduct which indicates possession must vary with the type of land. In the case of vacant and unenclosed land which is not being cultivated, there is little which can be done on the land to indicate possession. Moreover, the possession which the respondent seeks to maintain is against the appellant who never had any title to the land. In these circumstances, the slightest amount of possession would be sufficient. In Bristow v Cormican ((1878), 3 App Cas at p 657), Lord Hatherley said:

'There can be no doubt whatever that mere possession is sufficient, against a person invading that possession without himself having any title whatever--as a mere stranger; that is to say, it is sufficient as against a wrongdoer. The slightest amount of possession would be sufficient to entitle the person who is so in possession, or claims under those who have been or are in such possession, to recover as against a mere trespasser.'"

[3] I accept the evidence of the Claimant that she took possession of the Property before her mother died because her mother was ill for some time. I also accept that the Claimant has always visited the Property and that she employed a caretaker for the main purpose of preventing squatting or as she expressed in common parlance, to prevent persons "*capturing the land*". She said she did not know that she should have taken steps to transfer the land into her name or into the joint name of herself and her siblings who all live abroad.

- [4] She averred that sometime in the month of May 1999, the Defendant, his servant or agent wrongfully entered the Property and commenced construction of a building thereon.
- [5] The registered title for the Property dated 1st May 1973 (the Registered Title), is a title by description, that is to say, it does not have a sketch diagram or plan exhibited to it representing the various boundaries of the Property. The description of the Property is as follows:

ALL THAT parcel of land part of BELMONT SETTLEMENT in the Parish of SAINT JAMES containing by estimation Seven Acres Two Roods and Sixteen Perches more or less and butting Northerly partly on lands belonging to Benjamin Gordon and partly on lands belonging to Daniel Gordon Southerly partly on lands belonging to Kenneth Thorpe and partly on lands belonging to David Whitelock Easterly on lands belonging to Michael Lester and Westerly on lands belonging to Nessilda Jarrett SAVE and EXCEPT a Parochial Road leading from Belmont to Spring Garden running throughout from East to West on the Southern Boundary.

- [6] Pursuant to the Claimant's instructions, Mr T.B. Casserly a registered Land Surveyor, now deceased ("Mr Casserly"), prepared a survey plan of the Property bearing examination number 276230 ("the Plan"). By consent, the Plan was admitted into evidence during the trial as Exhibit 2. The Plan represents the Property as being irregular in shape but with a discernable, eastern, western, northern and southern boundary. The southern boundary is represented on the Plan by a relatively straight line running from east to west (or vice versa) but angled between iron peg (IP) 28 and IP 27. It is the limit of the southern boundary of the Property which is at issue in this case.
- [7] The Plan shows a parochial road (the "Road") as entering the Property (from Spring Garden) on its southern boundary, almost at the point where the southern boundary touches its western boundary (marked by IP 11 and IP 7). The Road forms a partial loop or as described in the proceedings, a horseshoe shape, the other side of which (from Belmont), enters the Property, before the half-way point of the southern boundary (marked by IP old 2 and IP 1). The apex of the curve in the Road occurs before an imaginary line which forms the midpoint between the

southern and northern boundaries as indicated on the Plan. The effect of the Road having a horse-shoe is the creation of a semi circular shaped area of land which is described in the Plan as "Section 1".

- [8] The Claimant's case is that Section 1 is a part of the Property which is separated from the other portion of the Property by the Road. The Defendant on the other hand claims that Section 1 is not a part of the Property and that the Road represents a portion of the southern limit of the Property, in other words, the Defendant asserted that the Property does not continue beyond the Road to the other side as the Claimant asserted.
- [9] In addition to relying on the description of the Property as contained in the Registered Title, the Claimant's evidence is that she has known the Property all her life. She said that she knows of persons with the family name Whitelock owning land beside the Property. She asserted that, that land was owned by Kerrel Whitelock and is now owned by the Spences.
- [10] The evidence of the Defendant is that on 20th March 1997, Mr Casserly carried out a survey for Mr George Whitelock, the Claimant's father, in respect of a parcel of land handed down from Mr David Whitelock who was the Claimant's great grandfather. A survey diagram was produced which was certified by the Director of Surveys on 27th August 1997 and bears Survey Examination No 257720 (the "Survey Diagram").
- [11] The Court noted that the area of land reflected in the Survey Diagram is the same area as Section 1 to which reference has previously been made.
- [12] The Defendant's evidence is that his father George Whitelock is alive and in good health. He is aware of this claim and has not provided any title or documentary evidence whatsoever to the Claimant in support of the Claimant's asserted claim in respect of Section 1. The Claimant admitted in cross examination that prior to his entry on Section 1 in 1997 he had never done anything in relation to that land. He also admitted that he had never seen his

father on that land, but the Claimant explained that he (the Claimant) left Montego Bay since 1982.

[13] The Claimant asserted that he has known that land (Section 1) since 1972 because his grandfather and an uncle are buried on it. However he said that he cannot identify the burial site of either of them because their graves are unmarked, which was not uncommon for poor people and in any event he did not conduct a search. He explained to the Court that he is not sure when his grandfather's funeral was but it was before the Claimant was thirteen years old. Near the end of Counsel's cross examination of him, the Claimant asserted the funeral he attended was prior to 1972 and maybe in 1966. The Claimant insisted that he has known the Road since 1972 and he knows that the parcel of land belonged to his family.

[14] The Defendant placed heavy reliance on the description in the Registered Title for the Property and in particular the following words:

"...EXCEPT a Parochial Road leading from Belmont to Spring Garden running throughout from East to West on the Southern Boundary"

The Defendant argued that these words when construed using their plain and ordinary meaning, having special regard to the words "*throughout*" and "*on*" meant that the Road effectively formed a portion of the southern boundary. His suggested formulation was:

EXCEPT a Parochial Road leading from Belmont to Spring Garden running [from end to end] from East to West on the Southern Boundary

I did not understand the Defendant to be asserting that the Road formed the entirety of the southern boundary but if that was so, such an assertion would be untenable having regard to all the evidence before the Court.

[15] The Defendant also relied on the description contained in the Title of the Property as butting "...*Southerly partly on lands belonging to Kenneth Thorpe and partly on lands belonging to David Whitelock...*" The Defendant argued that the lands

belonging to David Whitelock to which reference is made is the disputed area, Section 1.

- [16] On or about 24th May 2011, the Court certified Mr Grantley Kindness a Commissioned Land Surveyor of Grantley Kindness and Associates, as an expert witness for purposes of this claim (“the Expert”) and on 15th June 2011, his Expert report with attached terms of reference dated the 28th September 2010 together with the Expert’s answers to questions posed by the Defendant, filed 18th July 2014 were admitted in evidence by consent exhibit 3 (together “the Expert Report”).
- [17] The Defendant produced a certified true copy of a registered title found at Volume 1089 Folio 523 in respect of property in the name of Diana Chapman (“the Diana Chapman Title”). Scribbled on the survey diagram to the west of the subject lands is the name “*K. Whitelock*”. In his response to questions posed by the Defendant, the Expert explained that his investigations revealed that this writing was not a part of the original title. It is the Court’s view that one does not need to be an expert in the field of handwriting to see that the “*K. Whitelock*” as it appears is markedly different from the other handwritten text which appears on that diagram and the Court accepts the evidence of the Expert on this point. In any event, even if the presence of that name was legitimate and did indicate the ownership of land by the person so named, because of the absence of sufficient evidence to demonstrate a connection of the land shown on the Diana Chapman Title to the disputed area, Section 1, it would be of no assistance to the Court in determining the issue of ownership of the disputed area.

The evidence of the Expert

- [18] The Expert’s evidence was helpful in clarifying a misunderstanding that, based on his questions, it appears that the Defendant had about some of the terminology employed in the description contained in the Registered Title when the description is applied to the Plan. He explained that the direction of a line on

the Plan is different from the location of the line. The direction, as the name suggests relates to whether the line is running east to west or north to south (or the various other directional permutations thereof). The location of the line relates to where it lies in relation to the boundary of the Property. By way of example the line shown on the Plan at the bottom of the Property, is the line located to the south of the property, however, the direction of that line is east to west (or west to east depending on how one chooses to express it).

[19] It was the opinion of the Expert that there is an ambiguity created by the description in the statement that the Road runs “**throughout** from East to West **on the Southern Boundary**”. He opined that the description of the Property and the observation on the ground makes it clear that the description refers to the fact that the Road actually passes **throughout** the Property. When cross examined by the Defendant as to how he reconciles his evidence on this point with the rest of the statement that the Road runs “**on the Southern Boundary**”, the Expert explained that the entire description has to be taken together including the description of the Property as butting “...*Southerly partly on lands belonging to Kenneth Thorpe and partly on lands belonging to David Whitelock ...*”.

[20] The Expert explained that the Plan shows, and he has independently verified, the lands immediately below and touching Section 1 as being owned by Kenneth Thorpe. The Plan shows the lands to the right of Mr Thorpe’s land which are adjacent to the Property as being owned by Michael Lester. He said that those lands shown on the Plan as belonging to Michael Lester are currently owned by Cornerstone Investments & Finance Company Ltd in care of Bruce Spencer. His evidence as to what he was told about the ownership of that parcel of land in the past is hearsay and has been disregarded by the Court. However his evidence (exclusive of what he was told) was that if Section 1 is treated as a part of the Property, then the Plan would reflect it as butting, southerly partly on lands belonging to Kenneth Thorpe and partly on lands belonging to Michael Lester (instead of Michael Whitelock as described in the Title). The reasonable inference would then be that the lands shown on the Plan as being owned by

Michael Lester, (or at least a portion of those lands which are adjacent to the property on the southern boundary) at the time the Title was prepared in 1973, belonged to David Whitelock.

Conclusion

- [21] This is a case in which it was not simply a matter of construing the description of the Property in the Registered Title that construction had to be performed while also considering the evidence relating to the physical layout of the disputed property. The evidence of the Expert was helpful in demonstrating the nexus between the descriptive words and the physical space as represented on the Plan. I remind myself that the Court is entitled to reject the evidence of an expert witness. However, I accept the analysis of the Expert Mr Kindness which I have referred to in the preceding paragraph and I wholly accept his conclusion that Section 1 forms a part of the Property. I find that conclusion is reasonable having regard to the ownership of lands immediately to the south of Section 1 by Mr Kenneth Thorpe, in the context of the description in the Registered Title of the Property as butting southerly “...*partly on lands belonging to Kenneth Thorpe...*”.
- [22] I am fortified in my conclusion because there was no evidence presented to the Court of Mr Kenneth Thorpe having owned any other land butting the Property southerly. In the absence of any evidence that he owned other such lands then the inescapable conclusion is that Section 1 is a part of the Property. As it relates to the description in the Registered Title of lands butting the Property southerly and owned by David Whitelock, the reasonable inference is that those lands are the lands shown on the Plan as being owned by Michael Lester and that they were previously owned by David Whitelock at the time that the Registered Title was produced.
- [23] On the evidence of the Claimant as to her possession, which the court accepts, I find that a claim in trespass is maintainable by her against the Defendant who I have found to be, in the words of Lord Hatherly in **Bristow v Cormican** (supra)

“a person invading that possession without himself having any title whatever--as a mere stranger”.

[24] The Court has not been presented with any evidence as to the damages sustained by the trespass and in the circumstances I will not make an award

Disposal

[25] For the reasons given herein, the Court makes the following declarations and orders:

1. The land at Belmont Settlement in the parish of St James registered at Volume 1094 Folio 740 of the Register Book of Titles in the name of Linda Crooks includes the area of land identified as section 1 shown on the survey plan prepared by T. B. Casserly bearing examination number 276230 (“the Property”).
2. The Defendant, his servants and/or agents are restrained from entering upon the Property to construct a building or for any other purpose.
3. Costs of the Claim are awarded to the Claimant to be taxed if not agreed.