



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION

CLAIM NO. HCV 04498 OF 2007

BETWEEN	HENRY HECTOR DOCKERY	1 ST CLAIMANT
AND	LURLINE LEONORA DOCKERY-GORDON	2 ND CLAIMANT
AND	ALBERT MULLINGS	DEFENDANT

Miss Janet Taylor instructed by Taylor, Deacon and James for the Claimants.

Messrs. Owen C. Crosbie instructed by Owen C. Crosbie & Company for the Defendant.

Action for Possession – Licence – Whether Equity Created – Power in Court to determine how Equity should be satisfied.

Heard: 14th October 2008 & January 28th 2009

Thompson-James, J

In this case old Mr. Eric Dockery, if I may so describe the uncle, was the owner of land in Longwish, Hatfield; Manchester. He is the uncle of the Claimants, Mr. Henry Hector Dockery and Mrs. Lurline Leonora Dockery-Gordon as well as the Defendant Mr. Albert Mullings (I will refer to the Claimants as Henry and Lurline to prevent confusion and not out of disrespect).

According to Mr. Mullings he moved in to live in the same yard as his uncle and continue to live there for upwards of forty (40) years, up to the present. During the period that he occupied the premises along with his wife and children he did construction on the premises. He demolished a dirt house and replaced it

with a more permanent structure made of concrete. Mr. Henry Dockery said that it was addition and repairs that were done.

Suffice to say that old Mr. Dockery died sometime in 1994 and prior to his death he sold the premises to Henry and Lurline and a registered title was issued in their names.

The Claim

By way of a Fixed Date Claim Form dated the 5th November 2007 and filed on the 8th November 2007 the Claimants, Mr. Henry Dockery and Mrs. Lurline Dockery-Gordon claim against the Defendant Mr. Albert Mullings the following orders:

- (a) An order requiring the Defendant Mr. Albert Mullings to vacate premises located at Longwish, Hatfield in the parish of Manchester.
- (b) Such other and further relief as this Honourable Court may deem fit.

The Claimants' Account

The evidence in chief from the Claimants is disclosed in the affidavits of Mr. Henry Dockery and Mr. Sydney Rowe. Mr. Henry Dockery depones that he and his sister Mrs. Lurline Dockery-Gordon are the registered proprietors in respect of the subject property, being land registered at volume 1263 folio 544 of the Register Book of Titles. This property was purchased from their uncle, Mr. Eric Dockery on or about the 22nd of April 1993. The Certificate of Title is exhibited as HHD1.

At the time of purchase Mr. Albert Mullings was occupying a house on the property. He was advised of the change of ownership and a request was made

that he pays a nominal rental of \$1,500.00. Mr. Mullings paid the rent up until 1993. Since then despite request he has refused to pay any further rent.

Henry and Lurline now require the property as they intend to upgrade it with the construction of further buildings and the renovation of existing ones.

Mr. Mullings was served with a Notice to Quit on or about the 11th of August 2007 however, he has remained on the property. They are requesting that Mr. Mullings vacate the property.

In Cross-examination

He indicates that he has no power of Attorney in relation to his sister Lurline. He testifies that he lived on the property but later admitted that he visits the property occasionally.

He does not know how many years Mr. Mullings has resided on the property but he is aware that he has resided there with his wife and four (4) children for upwards of twenty (20) years. Later on in his cross-examination Mr. Henry Dockery admitted that Mr. Mullings has been living on the premises for over thirty-three (33) years.

He has seen Mr. Mullings making construction to the house, doing repairs and making additions in the form of fixing the roof and adding a kitchen. This was done over twelve (12) years or more ago. He sent letters to Mr. Mullings. The first of which was to inform him that he and Lurline were the new owners and the other, a year later, requesting that he pays rent.

There are two (2) buildings on the subject property although his uncle had owned other buildings close by.

Mr. Mullings occupied one of the buildings and his uncle used to occupy the other.

The property was acquired at a cost of \$200,000.00.

In Re-Examination

He admitted that the additions were made before the death of his uncle.

Mr. Sydney Rowe's Account

In his affidavit Mr. Rowe depones that he knows the property very well as he used to reside next door from in the early 1980's and in April 1986 he was invited by Mr. Eric Dockery to reside on the property in a house that old Mr. Dockery owned.

Henry and Lurline would visit the property from time to time taking groceries and money. Albert Mullings resided on the property as well and in 1993 he witnessed a document on behalf of Mr. Eric Dockery which was an agreement for sale marked exhibit SR 1. He was not surprised at this sale agreement. He continued to live on the property after it was sold.

He had received a letter, as to the ownership of the property from Henry and Lurline. He collected the rent from Mr. Mullings who ceased paying the rent after a time claiming that he had fixed the roof of the house and that he would not be making any further rental payments until he had been paid the costs of the repairs. He conveyed this information to Henry who later visited the premises. Mr. Mullings resumed paying the rent but ceased altogether after a time.

He had spoken to Mr. Mullings about Henry and Lurline's ownership of the premises and this ownership was never disputed by Mr. Mullings.

As far as he is concerned at the time of the sale of the property old Mr. Eric Dockery was in his right mind.

In Cross-Examination

He maintained that Mr. Mullings did in fact pay the rent although he does not know the payment dates. He had the stubs to show and denied that he made up the stubs.

The Defendant's Account

Mr. Albert Mullings in his affidavit disputes the claim and depones that the claim is a sham perpetuated by the Claimants in a conspiracy with their attorney and others to effect registration in the Claimants' name and that the alleged vendor was at the time about 94 years old, bedridden, unable to recognize or communicate with anyone and did not have the mental status to carry out the transaction.

The house that he occupied in 1993 was built by him, replacing a dirt house, with the permission of his uncle Eric Dockery and he has continued to occupy this house continuously and without interruption.

He was married on the 9th June 1977 and there are four (4) children of the marriage.

Henry and Lurline visited the premises whilst he was there and his occupation has been upwards of forty (40) years.

He has been paying taxes for the premises and he supplied tax receipts marked exhibits AM2.

He received communications from Henry and Lurline concerning their ownership of the premises but he did not believe this was true and he failed to communicate this to his uncle Eric whom he considered to be senile at the time.

In Cross-Examination

He said that he owns the land. His uncle gave him permission to build. He maintained that he demolished the dirt structure and built the existing structure. His aunt Mabel who used to live with him in the dirt structure, moved with him to the new house.

He made no enquiry as to the land that he was given permission to build on.

He said it was because of the length of time he was there his uncle gave him permission.

I find the following Inconsistencies

On Mr. Henry Dockery's Account

In his cross-examination he said that he lived on the property but changed this to say that he visited the property occasionally.

Further he said that he did not know if Mr. Mullings lived on the property upwards of thirty-three (33) years but went on to acknowledge later in cross-examination that Mr. Mullings was living there over thirty-three (33) years.

On Mr. Albert Mullings' Account

In his affidavit dated 24th January 2008 and filed on the 25th January 2008 at paragraph 3 he denied paying the rent but at paragraph 4 of his affidavit dated the 7th April 2008 he admitted paying the rent but said he did so out of ignorance. In cross-examination he again denied paying this rent.

I find that the following areas are not in issue:-

1. That old Eric Dockery was the uncle of Henry and Lurline as well as Mr. Albert Mullings and that he was the owner of the subject property.
2. That Mr. Albert Mullings has been residing on the property for upwards of thirty-three (33) years and has made additions to the premises. Henry contends that it was repairs and additions that were done. Mr. Mullings said he constructed a new structure after demolishing an old dirt one.
3. That Sydney Rowe resided at the premises from sometime in 1986 up to about 2005 when hurricane Dean visited Jamaica.
4. That a registered title has been issued in the names of Henry and Lurline to the subject property and that Mr. Mullings was advised of the change in ownership of the property and a request made for him to pay rent.
5. That prior to acquiring the premises Henry and Lurline would visit from time to time, in particular Henry.
6. That Mr. Mullings paid rent and then ceased. The dispute is to the length of time. Henry contends that Mr. Mullings paid the rent for quite sometime then ceased. Mr. Mullings contends that he made no payment at all or just one payment.

Submissions on Behalf of the Claimants

In the submission filed, the Claimants in essence points out the provision of section 68 of the Registration of Titles Act. The Certificate of Title being conclusive evidence of the title as well as the provision of section 161 of the Registration of Titles Act which in essence indicates that the Certificate of Title is a bar to all actions of ejectment against registered proprietor with certain exceptions as in the case where it is proven that the Certificate of Title was obtained by fraudulent means. That is the indefeasibility of the Registered Title.

The submission referred to the cases of **Honnibal vs. Glele 43 WIR 313**, **Pottinger vs. Raffone (2007 P.C. Appeal of No. 64 of 2005**, **Boyd vs. Mayor of Wellington 1924 43 NZLR 1174.**, **Assets Co. v. Mere Rohi 1905(AC) 176**, **Ross v. Cinnicle 1972 12 JLR 1017**

Concluding in this respect that the Claimants had an unassailable title and had the right to recover possession from the Defendant.

In relation to the Defendant's reliance on section 3 of the Limitation of Actions Act the Claimants submitted that the Defendant cannot claim adverse possession as he merely resides on the premises just as Mr. Sydney Rowe. His possession was not adverse against Eric Dockery. His payment of rent supported this contention. Citing the case of **Edginton vs. Clarke and another 1963 3AER** page 468 among others.

The Submission of the Defendant

In essence the filed submission points out that payment of rent is irrelevant and does not avail the Claimants in the face of the Limitation of Actions Act sections 16 and 30 and that payment after the period of limitation has run

ineffective. The Defendant had in fact acquired ownership of the premises or at least that portion of land on which his matrimonial home is situated.

Citing **Clinton Chisholm v. James Hall 7JLR 164.**, **Vida Bowes vs. Allen Spencer 14 JLR 215.**

In relation to the right to possession, quite apart from the Limitation of Actions Act, the submission also cited the case of **Ramsay vs. Margaret 1894 2Q.B.** page 27 (the judgment is reported at page 18) which it is said was cited with approval by Luckoo J.A. in Cayman Island Civil Appeal No. 5/67.

The submission proposed that the person with the better title is the one who is in possession and that the Defendant had in fact acquired ownership of the premises at the time the Claimants purchased. Hence the claim is ill-conceived.

Finding of Facts

I do not find that Henry not having a power of attorney in relation to Lurline in this matter to be material.

I find as a fact that Henry and Lurline possess a registered title to the subject property exhibited as HHD1 and that there is no evidence to prove that this title was fraudulently obtained.

I find as a fact that there is no evidence to support Mr. Mullings' contention that at the time of the signing of the sale agreement, old Mr. Eric Dockery was senile and did not have the mental capacity to carry out the transaction. I therefore reject Mr. Mullings' evidence in this respect as well as his evidence that

the transaction was a sham perpetuated with the conspiracy of Henry and Lurlines' Attorney.

I find as a fact and accept Mr. Sydney Rowe's evidence when he said that he collected rent from Mr. Mullings and accept his evidence when he said that the stubs were not fabricated.

I accept Mr. Sydney Rowe's evidence and find as a fact that Mr. Mullings at one stage ceased to pay the rental and indicated that he had repaired the roof and would not be paying any further rent until this cost is reimbursed. I reject Mr. Mullings' evidence when he said otherwise.

I find, as a fact, that all that Mr. Mullings had in relation to his activities of construction on the premises was permission to do so. Mr. Mullings testified that he got permission from old Mr. Dockery to build.

I asked the question whether Mr. Mullings had acquired a possessory title to the land that he claims at Longwish, Manchester and found the answer in the fact that all that Mr. Mullings had was permission to carry out construction or additions to the property and that this permission was given by old Mr. Dockery. This permission coupled with the fact that he paid rent results, I find, in the fact that he did not own the land.

Having found that there is no evidence to prove that Henry and Lurline obtained the Certificate of Title otherwise than lawfully, I find that they are in fact the registered owners of the property in question.

Payments of taxes, I find, do not confer ownership.

The Applicable Law

By section 3 of the Limitation of Actions Act:

No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.

By **Halsbury Laws of England 4th Edition at page 505:**

What constitute adverse possession is a question of fact and degree and depends on all the circumstances of each case, in particular the nature of the land and the manner in which land of that nature is continually used;

....However, for the claimant's possession of the land to be adverse, so as to start time running against the owner, the factual possession should be sufficiently exclusive and the claimant should have intended to take possession where the occupier's possession of the land is by permission of the owner, that possession cannot be adverse **B.P. Properties Ltd. vs Buckler 1987 55 PACR 337 CA** and possession is never adverse if it is enjoyed under a lawful title. **Buckinghamshire County Council vs. Moran 1989 2AER page 225.**

Inwards and ors. vs. Baker 1965 Q.B 29 at page 36 – Held:

That where a person expended money on the land of another, in the expectation induced or encouraged by the owner of the land that he would be allowed to remain in occupation, an equity was created such that the court would protect his occupation of the land, and the court had power to determine in what way the equity so arising could be satisfied.

The Application of the Law to the Findings of Facts

It is accepted that a possessory title will only be acquired after twelve (12) years of continuous occupation which is associated with the requisite intention to possess. This is supported by section 3 of the Limitation of Actions Act per

Brooks J in claim # C.L. 1999/P127 - Proprietors Strata Plan No. 461 vs. International Hotels (Ja'ca) Ltd at page 6

In **Inwards and ors vs. Baker 1965 C.A. 29** at page 36 Lord Denning propounded:

It is quite plain from those authorities that if the owner of land requests another, or indeed allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as entitle him to stay. He has a licence coupled with an equity.the equity arising from expenditure on the land need not fail "merely on the ground that the interest to be secured has not been expressly indicated ... the court must look at the circumstances in each case to decide in what way the equity can be satisfied."

So in this case, even though there is no binding contract to grant any particular interest to the licensee, nevertheless the court can look at the circumstances and see whether there is an equity arising out of the expenditure of money. All that is necessary is that the licensee should, at the request or with the encouragement of the landlord, have spent the money in the expectation of being allowed to stay there. If so, the court will not allow that expectation to be defeated where it would be inequitable so to do".

In the present case it is quite plain that although there might not have been any contract to grant any particular interest to Mr. Mullings, old Mr. Dockery allowed him to expend money on the property. Mr. Mullings, due to the length of time that he has been on the property, must have expected to stay there. At the very least old Mr. Dockery acquiesced to Mr. Mullings being there and doing all the construction. Clearly this must have raised the expectation in Mr. Mullings mind of being allowed to stay there, if not for his life, for as long as he wished to stay there.

In **Inwards & Ors. vs. Baker** at page 37 Lord Denning propounded that:

"The court will not allow that expectation to be defeated where it would be inequitable to do so".

I find that Mr. Mullings has a license coupled with an equity and he could not just be turned away empty handed when Henry and Lurline acquired the property.

Henry Dockery visited the premises. According to him he saw the additions and repairs being carried out by Mr. Mullings. I find therefore that Henry had notice.

Henry and Lurline having taken with notice, as well as the fact that they had full knowledge, are barred as successors in title by this equity. As Lord Denning points out in **Inwards & Ors. vs Baker at page 37**

"It is an equity well recognized in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that as the result of that expenditure he will be allowed to remain there."

It is for the court to say how that equity can be satisfied.

I hold that this equity can be satisfied and in arriving at how this equity can be satisfied, I am guided by the order of Bingham J, in **Esmine Williams vs. George Breary and Cynthia Breary 1984 21 JLR at page 6.**

Conclusion

Taking all the factors into consideration including the number of years that Mr. Mullings has lived on the premises, his construction on the premises and the condition of his ailing wife, the equity which in my opinion clearly arises in favour of Mr. Mullings must be satisfied by the following orders:

1. That the Claimants as owners of the property be entitled to discharge the equity by compensating the Defendant. Such payment to be based upon the market value of the house as at the time of the judgment.
Such price to be fixed by a competent valuator appointed by the court.
2. That the Defendant and his family be allowed to continue in occupation of the said house until such time as the compensation is determined and paid.
3. Failing the payment of compensation the Defendant Albert Mullings and his family be permitted to remain in the said house as long as he desires to as his home and for the rest of his life.
4. That there be no order as to costs.