



IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 08013 of 2011

BETWEEN THELMA ROSE FARRINGTON CLAIMANT

A N D REINFORD WALTERS DEFENDANT

Real property – registered title – joint tenancy – divorced- Claimant (wife) left property and went abroad – parties divorced - whether Claimant's interest extinguished or abandoned.

Charles Piper and Wayne Piper instructed by Charles Piper and Associates for the Defendant

Michael Lorne for the Claimant.

17th October 2013 and 1st November, 2013

Heard: 17th October and 1st November 2013

Coram: David Batts, J

[1] At the commencement of this hearing the Claimant's attorney advised that his Client was absent. He explained that she had promised to attend but he had not received any explanation for her absence. She lived abroad. He applied for an adjournment. The application was opposed by the Defendant, whose counsel indicated that this was the 3rd occasion that the matter had been before the court. Further that as the Claimant had not filed affidavit evidence there was no basis for her participation as there was nothing for her to be cross examined upon.

- [2] I ruled that the matter should proceed. The history of this litigation was not such that an adjournment could be entertained. The Fixed date Claim Form was filed on the 19th December 2011. It was supported by Particulars of Claim. An acknowledgement of service was filed on behalf of the Defendant on the 16th March 2012. The Defendant filed a defence and counterclaim as well as an Affidavit on the 7th May 2012. On the 27th September, 2012 the Honourable Miss Kay Beckford ordered that the Fixed Date Claim form be struck out as Section 17 of the Property Rights of Spouses Act was inapplicable, the parties already having been divorced. On the 5th October 2012 the same judge ordered that the counterclaim was adjourned for hearing on the 23rd April 2013. It was also ordered that the parties attend for cross examination and that affidavits be filed by the 1st March 2013. By Notice of Application dated 19th April 2013 and supported by an affidavit of the Claimant and her attorney at law application was made to allow for the filing of a defence to counterclaim. This application was refused on the 23rd April 2013 and the trial of the counterclaim adjourned to the 17th October 2013 for one day.
- [3] The only matter for my consideration therefore is the trial of the counterclaim brought by the Defendant against the Claimant. No defence to counterclaim is before me nor is there a witness statement from the Claimant. In the circumstances it was pointless to adjourn and the Claimant is absent without explanation. Even had she been here it is difficult to imagine what active role she might have had. I ruled that the matter proceed and indicated that although the matter would be heard in Chambers I intended to deliver a judgment in open court. I now fulfill that promise.
- [4] Defendant's counsel opened in full to the facts and the law. He submitted that his client had been the sole provider and purchaser of the various properties acquired. Further that as regards the property in question he had put his wife's name on it out of respect for the union. He asserted that his wife abandoned the union and went overseas leaving the Defendant with their daughter then 5 or

6 years old. The Claimant left the matrimonial home in 1983 or 1984 and obtained a divorce overseas in 1985. They had been married in 1977.

[5] Mr. Piper submitted therefore that his client was entitled to succeed on two bases:

- a) That he had paid the full price for the premises and had no intention to give the Claimant a beneficial interest.
- b) That the Statute of Limitation was a permanent bar to the Claimant gaining an interest and her interest if any was now extinguished. He relied upon ***Wills v. Wills PCA 50/2002*** and ***Freckleton v Freckleton HCV 01694 of 2005*** judgment delivered 25 July 2006.

[6] The Defendant Reinford Willis was sworn and his Affidavit dated 7th May 2012 put in as his evidence in chief. He was extensively cross examined by Mr. Michael Lorne for the Claimant. It is fair to say that the Defendant affirmed his evidence in chief and was not seriously troubled by the cross examination. Indeed a telling response came with the following exchange:

- “Q: You knew quite well that she never abandoned her interest in the premises.
- A: She not only abandoned place but she abandon her children and me.”

[7] At the close of the Defendant's case Mr. Lorne renewed his application for an adjournment. I refused the application. The Claimant called no evidence in Defence of the counterclaim, and as there was no filed Defence to the counterclaim, this was not surprising. The parties were thereafter allowed to make submissions. Mr. Piper was as usual very thorough in his presentation, at one point he submitted this,

“All evidence points to the fact that not only did the Claimant have no intention to return but more importantly Mr. Walters (the Defendant) maintained possession and operated in terms of premises as if they were solely his. He never called upon her for assistance and when rented he kept the rental for himself and used it as he saw fit.”

[8] Mr. Lorne challenged the court to find that 12 years had not run and that as the Claimant’s child was at all material times in possession she represented her mother’s interest. The Claimant therefore enjoyed possession vicariously.

[9] Having considered the counterclaim and the evidence in support I have no hesitation in finding for the Defendant. It is clear that he continued in sole and undisturbed possession since 1983 or 1984 when the Claimant left the premises and went abroad. 12 years have long past and his possession remained undisturbed until the filing of this claim in 2011. He therefore has extinguished the title of his co-owner. It is too late in the day to suggest either that one joint owner cannot obtain a possessory title over the others interest; or that so long as the legal owner intends to maintain his interest the Limitation of Actions does not apply. It is sufficient for me to refer to and respectfully adopt the words of Lord Walker in **Wills v. Wills** (cited above),

“But if (as must sometimes happen) a Jamaican worker overseas forms new attachments and starts a new life, and entirely abandons the former matrimonial home he or she will (within the ample period of 12 years) have to consider the legal consequences of that choice.”

[10] This Court does not know whether the Claimant considered the legal consequences when she left the matrimonial home in 1983 or 1984, got divorced and stayed overseas for in excess of 12 years. She never returned to exercise any act of ownership, nor did she collect rental or other outgoings. She only

returned for a short period in 2011. At that time she stayed in the apartment at the premises which their daughter occupied.

[11] In these circumstances it is manifest that the Defendant has obtained a possessory title which has extinguished the Claimant's legal interest. I therefore give judgment for the Defendant on his counterclaim.

[12] I make the following Orders and Declarations as requested by Mr. Piper in his opening submissions:

1. It is hereby declared that any claim Mrs. Thelma Rose Farrington had in relation to 46 Champlain Avenue Kingston 20 being all that parcel of land registered at Volume 1079 Folio 257 of the Register Book of Titles is barred by the operation of the Limitations of Actions Act.
2. The costs of defending this action and of pursuing the counter claim be the Respondents to be agreed or taxed.


David Batts
Puisne Judge