



[2012] JMSC Civ. No. 89

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2009 HCV 005448

BETWEEN	MELSOME LEE	CLAIMANT
AND	WILFORD PHILLIPS	1ST DEFENDANT
AND	JEREMY PHILLIPS	2ND DEFENDANT
AND	SYDNEY PHILLIPS	3RD DEFENDANT

Mr. W. Adams instructed by Robertson, Smith
Ledgister & Co. for Claimant
Mr. A. Williams instructed by Usim, Williams & Co.
for the Defendants

Heard on 17th February 2012 and 19th July, 2012

***Land – “Ownership” – Tenant of “owner” – “Owner” deceased – Sister of
deceased purporting to enter into Oral Lease Agreement with Claimant –
Building erected on property by Claimant – Buildings on property damaged
– Claimant effecting repairs thereto on representations made – Defendants
bona fide owners of property after purchase from previous owner –
Whether bona purchasers for value without notice – Estoppel by
acquiescence – Laches***

IN CHAMBERS

CORAM: MORRISON, J

[1] The matter at hand betrays an uncomplicated concatenation of facts susceptible of easy grasp.

[2] The Claimant's sincere, yet palpable claim against the Defendants is that he rented premises situate at 112B Waltham Park Road, St. Andrew, from one Iris Bell, in 1988. Shortly thereafter, the notorious weather system, Hurricane Gilbert, ravaged the building he then occupied thereon among others, resulting in Iris Bell importuning him to undertake the repairs to the buildings in exchange for the grant to him of a 5 year lease from January 1989 until January 1994. That was not the only representation that Iris Bell was to make to him. The representations apart from being unwritten included her assertion that she had bought the subject property from an entity known as the Small Business Loan Board at an auction sale and that she was awaiting the legal transfer of the title to her. That should he undertake the proposed repairs, as adverted to above, she would transfer the property to him after deducting the costs borne by him in effecting the repairs or, should he regard his expenditure as a loan to her she would repay him during the duration of the lease.

[3] Acting on the faith of Iris Bell's representations the Claimant illadvisedly effected repairs. However, this was conditional: that "he be given an option to purchase the property when it was legally transferred to her or at the end of the lease agreement whichever was sooner."

[4] In effecting the repairs as agreed the Claimant expended \$1,516,896.13. He continued his occupancy and duly paid his term lease rental of \$3,000.00 per

year until the decease of Iris Bell in November 1992, who died intestate leaving no issue.

[5] Ensuing therefrom, one Ms Khotarah Lane, her sister, became Iris Bell's personal representative. Ms. Lane having been apprised of the agreement Iris Bell and the Claimant "agreed to honour the agreement when the property was transferred to the estate" of Iris Bell. Ms Lane, because she then resided in England, "appointed Mr. Lee (the Claimant) as her agent to collect rent from other persons on the property and to do the general maintenance thereof until the estate was settled."

[6] It is the contention of the Claimant that up to 1996 the property was not transferred to Iris Bell or to her estate. In that same year the agency agreement between Ms Lane and the Claimant was terminated. However, the Claimant continued in occupancy "paying his term lease ..." and by that time had also constructed a shed on the property from which he carried on his engineering works" he being a Building Contractor.

[7] Not being unmindful of his precarious status, vis-à-vis- the subject property, the Claimant asserts that from 1996 onwards he directed enquiries at various state agencies, such as the Titles Office and the Inland Revenue Department and was informed that the property was registered in the name of the Small Business Loan Board. Subsequently, in 2008, through correspondence from attorneys-at-law, Richard Bonner & Associates to the

Claimant, he was informed that the Defendants, at bar, were now the owners of the property. Though initially piqued with disbelief when so apprised he conceded that the property was owned by Mrs. Eileen Simmonds and her husband, Cecil Simmonds they having been put in possession by Fiduciary Limited on 23rd December 1970. It is an unrefuted fact that Iris Bell was a tenant of the Simmonds'. As such, Iris Bell was, at the very least, unauthorized in subletting the property or of parting with its possession or of entering into any lease agreement with anyone without the prior consent or approval of the Simmonds'. There is not one jot or tittle of evidence to vouchsafe Iris Bell's authority so to do. She had, through her borrowed plumes, circumvented the Claimant and the deception did not abate even after her death what with Ms Lane entering into a lease agreement with the Claimant. From beginning to end the transaction were "a mockery a delusion and a snare" practiced upon an ill-advised Claimant.

[8] It is the unconfuted evidence of Mrs. Eileen Simmonds that in 1988 when the Claimant had effected repairs to the property, the said property was then owned by both her and her husband they having been put into possession by Fiduciary Limited on 23rd December, 1970. The Defendants subsequently entered the lists for on 20th February 2008 a transfer of the property to them from Mrs. Eileen Simmonds was effected.

[9] That being the factual context the issues now beckon.:

The Issues

1. Since it is uncontested that the Claimant did expend money to effect repairs to the property and on which he erected an office the question is who was the lawful owners at the time of the performance of those acts.
2. Is the Claimant entitled to any remedy against the Defendants on the basis of estoppel by acquiescence.
3. Is the Claimant's claim defeated by the doctrine of laches.

The Submissions

[10] The Claimant's written submissions, stripped of its unverified assertions, are without merit. To proclaim that Iris Bell had produced receipts indicating that she had in fact purchased property relating to 112B Waltham Park Road and was paying for it ... "may well require the willing suspension of disbelief." The arguments raised as to the efficacy and legitimacy of any Notice to Quit, subletting and subdivision is, with due deference to the Claimant, mistaken and misaligned.

[11] In essence the Claimants challenge is foreshadowed by the principle outlined in the case law authority of **Ramsden v Dyson** (1866) L.R. 1 H.C. 129: "If a stranger begins to build on land supposing it to be his own, and the real owner, perceiving his mistake, abstains from setting him right, and leaves him to

preserve in his error, a Court of equity will not afterwards allow the real owner to assert his title to the land.

Also the Claimant reposed on the authority of **Bell v Lever Brothers** (1932) A.C. 161, which deals with mistake on contract. Lastly, the Claimant embraced the authority of **Wilmott v Barber** (1880) 15 Ch. D. 96.

[12] The Defendants also relied on the principles contained in the authorities of the cases of **Ramsden** and **Wilmott**, *supra*.

In addition the Defendants placed reliance on the doctrine of laches and in so doing urged attention on **Brooks v Muckleton** (1909) 2 Ch. D 519 among other authorities which, in the nature of the case I do not find it necessary to mention.

The Law

[13] Since there is some commonality between the litigants concerning the **Ramsden v Dyson** principle I only need to retrace its principled decision and then apply that principle to the found facts in the instant case. Before doing so, I would wish to give a summary of the **Ramsden** facts.

"I Took a piece of land belonging to "R" from R's agent. This was by way of parol agreement. It was known to all parties that the land was to be built upon. A fixed rental fee was charged to "T" and, in addition, "T" outlaid money in erecting a building on the land. Afterwards, "T" made a written application to the agent for another piece of the land in order to put up a building on it. He was successful in taking the land as tenant at will

with the rent for the latter portion being also fixed. After the buildings were erected the persons who took the land from "T" were entered in the books of "R" as tenants. It was a common understanding between all the parties that the tenants, so long as the rent was paid, would not be disturbed. A time came when the tenant was desirous of transferring the land to another person and so notified "R" who acquiesced and thereby altered the name of the tenant on the rent book to reflect that transaction.

"T" alleged that there was believed to exist and that the agent of "R" had by words and conduct encouraged the belief that a person who had so taken and built upon "R's" land was entitled at his pleasure to become a lease holder, according to the prevailing practice, which would then entitle him to demand the grant of a lease for (6) years, renewable every (20) years on payment of a fine equal to double the ground rent. However, as things turned out, there was no evidence that it became a term of the agreement. Subsequently, a railway company became interested in purchasing pieces of the lands that were under parol agreement, on condition that leases were granted. The leases were in fact granted and the tenants received compensation for their buildings.

[14] At first instance it was held that the sketched circumstances did not support the contentions that a tenancy from year to year had been created; that it did not establish any title to compel the grant of a lease; that "R" who having brought ejectment proceedings against "T", equity would not intervene to compel

the grant of a 60 years' lease, nor to stay the ejectment. This decision provoked an appeal.

[15] Lord Kingsdown, in this English and Irish Appeals hearing, delivered the leading Judgment. In a compendium it is this: If a man, under a verbal agreement with a landlord for a certain interest in land, or under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and, upon faith of such promise or expectation, with the knowledge of the landlord, and without objection by the landlord, lays out money upon the land, a Court of Equity will compel the landlord to give effect to such promise or expectation.

Thusly, the decision of the lower court was reversed.

[16] If I may be pardoned and should I seem to genuflect in an act of judicial deference, it is to the unctuous language that was employed by Lord Kingsdown. Leaning on the principle as expressed in his introductory words, I quote him in *extenso*: "My Lords, I regret that in a case of so much importance as this is there should be any difference of opinion (sic) among us as to the proper decision of it, and I should have been glad, if the practice of your Lordships' House allowed me, to withhold the expression of my dissent from the order proposed by the Lord Chancellor. But having submitted, in writing, very fully to your Lordships the grounds of my opinion, without any success, it is necessary, and I think it would not be useful, that I should do more on the present occasion than state in a very

few words what I understand to be the law upon the subject, and the effect generally which the evidence has produced on my mind.”

[17] Having embraced the opinion of principle, as quoted above, Lord Kingsdown, with whom Lord Westbury agreed, qualified his principled stance by reference to a corollary: “If on the other hand, a tenant being in possession of land, and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or an allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the Landlord, the tenant has no claim which any Court of law or equity can enforce.”

[18] As if the expression of the principle needed to be improved upon by elucidation, Fry, J in **Wilmott v Barber**, *supra*, provided the occasion. I shall not descend to the particulars of the **Wilmott** case suffice it to refer to the constituent ingredients of the principle mined by Fry, J: “It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view that is an abbreviated statement of a very true proposition. A man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights.” What, then, he asks rhetorically, are the elements or requisites necessary to constitute fraud of that description? He answers in this manner: In the first place the plaintiff must have made a mistake as to his legal rights.

Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief.

Thirdly, the defendant, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights.

Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights.

Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do."

[19] The conscience of equity, it is established, at the quick of touch, smarts at even the seeming appearance of fraud. Equity frowns upon acts, though seemingly valid in law, which excites the conscience.

[20] In the instant case, I do not find that any of the indicia, which must cohere, have been proved, that is, mistake on the part of the Claimants, expenditure by him, with passive knowledge on the part of the legal owner as to his legal rights or else in his acquiescence thereto or his conduct in the face of the reality of the Claimant's mistaken belief and the Defendants passive or active encouragement of the Claimant in his expenditure.

[21] In addition, the Defendants at bar cannot be imposed upon in the terms prayed for by the Claimant, according to Section 70 of the Registration of Titles Act:" the proprietor of land or of any estate or interest in land under the operation of this Act shall, except in the case of fraud hold the same as the same may be described or identified in the certificate of title, subject to any qualification that may be specified in the certificate, and to such encumbrances as may be notified in the folium of the registered book constituted by his Certificate of Title but absolutely free from all other encumbrances whatsoever, except the estate or interest of a proprietor claiming the same land under a proper registered Certificate of Title ..."

[22] Further, dictates Section 71, "except in the case of fraud no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any registered land, lease, mortgage or charge shall be required or in any manner concerned to enquire or ascertain the circumstances under or the consideration for which such proprietor or any previous proprietor thereof was

registered, or to see to the application of any purchase or consideration money or shall be effected by notice actual or constructive of any trust or unregistered interest any rule of law or equity to the contrary notwithstanding and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.”

[23] It appears to me to be abundantly clear from the provisions of the cited sections of the relevant statute, despite the trenchant submissions to the contrary, that in order to establish his claim the Claimant would have had to show fraud on the part of the Defendants. This he has failed to do.

[24] The lack of potency in the proffered arguments in attempting to do so is manifest so as not to disturb the status of the Defendants they being *bona fide* purchasers for value without notice of the Claimants interest. It is also to be observed that the Claimant failed, in view of his expenditure after being prevailed upon by Ms Iris Bell, to protect his interest pursuant to the Registration of Titles Act.

[25] The doctrine of laches was relied on by the Defendants. This the Claimant sought to deflect.

[26] Laches, in its etymology, is a French word for “slackness” or negligence or not doing. That definition was cited by North, J. in **Partridge v Partridge**, [1884]

1 Ch. 351. In **Sebag v Abitol**, 4 M & G 463 Elenborough, C.J defined laches as a neglect to do something which by law a man is obliged to do.

[27] In **Brooks v Mickleton**, *supra*, Joyce, J. adopted the undermentioned doctrine in this wise: "In **Smith v Clay** Lord Camden LC. held that a bill of review might be barred by delay of (20) years, and in the course of his judgment he made the following observations: - A Court of Equity which is never active in relief against conscience, or public convenience, had always refused its aid to stale demands, where the party has slept upon his right and acquiesced for a great length of time. Nothing can call forth this Court into activity, but conscience, good faith, and reasonable diligence, where these are wanting, the Court is passive, and does nothing. Laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction, there was always a limitation to suits in this Court."

[28] In the instant case the Claimant was not awakened into action, even after the representation of Ms Iris Bell and his accompanying expenditure until the filing of this Claim on October 2, 2009, that is, 21 years after. I,like, Lord Camden, would set my face against such neglect and inaction on the part of the Claimant and say that his claim is defeated by the doctrine of laches.

[29] Without being gratuitous if indeed the Claimant has any remedy at all, it is certainly not against the Defendants in this suit.

[30] For the above reasons, on a balance of probabilities, the reliefs sought by the Claimant are refused. Judgment is hereby entered in favour of the Defendants who are to have their costs agreed, if not, then such costs are to be taxed.