



[2022] JMSC Civ.39

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV02365

BETWEEN THE ADMINISTRATOR GENERAL FOR JAMAICA CLAIMANT
AND ZENA MAY HOLNESS DEFENDANT

IN CHAMBERS

Ms. Melissa White and Ms. Oraina Lawrence instructed by The Administrator General of Jamaica for the Claimant

Mr. Hugh Wildman and Ms. Indira Patmore instructed by Hugh Wildman & Co. for the Defendant

Heard: February 7, 8 and April 1, 2022

Adverse Possession – Joint tenants – Whether co-owner dispossessed

CARR, J

The Claim

[1] The Administrator General by way of fixed date claim form seeks the intervention of the court in respect of the estate of Everton Lynch. The claim is for declarations that the defendant's legal right to land located at 2B Rivoli Avenue has been extinguished and that the defendant (Ms. Holness) holds the property in trust for the estate of Everton Lynch. The claimant asks the court to find that Everton Lynch was in open, undisturbed, exclusive and intentional possession of the property for

a period in excess of twelve years and thereby had acquired the property adversely.

Issues

- [2] Whether the title of the defendant has been extinguished by virtue of the Limitation of Actions Act.

Decision

- [3] The claimant has proved on a balance of probabilities that Everton Lynch dispossessed the defendant for the requisite statutory period.

The Law

- [4] Section 68 of the Registration of Titles Act ("RTA") provides that a certificate of title is conclusive evidence of title. The courts usually will not look behind a registered title where there is a dispute between parties as to the ownership of property. The presumption however, is qualified by the operation of any Statute of Limitations. Section 3 of the Limitation of Actions Act ("LOAA") provides the time frame within which a person can bring a claim to re-enter upon lands, recover possession, or for rent:

"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."

- [5] Section 3 is to be read with Section 30 of the said Act which states:

“At the determination of the period limited by this part to any person for making an entry or bringing any action or suit, the right and title of such person to the land or rent for the recovery whereof such entry, action or suit responsible might have been made or brought within such period shall be extinguished”.

- [6] The effect of Sections 3 and 30 is that an owner of land may find that his title is extinguished by law once the other party can satisfy a court that they have occupied the land undisturbed for the requisite period of a minimum of twelve years. The principle is referred to as adverse possession and the law is well settled.
- [7] In the Privy Council decision of **Wills v Wills**¹ it was held that the two elements necessary to establish possession in cases such as this, 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 (the intention to possess). It was the oft held view that the party claiming adverse possession had to show an act which was deliberate or unfavourable in respect of the owner. The courts have since decided that 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.
- [8] It is also a well settled principle of law, that the sections are applicable to co-owners of property in the same way as it is to strangers. The Court of Appeal decision of **Winnifred Fullwood v. Paulette Curchar**² reiterated that position and made reference to Section 14 of the LOAA.

¹ [2003] UKPC 84

² [2015] JMCA Civ 37

“When any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares, of such land or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons entitled to the other share or shares of the same land or rent such possession or receipt shall not be deemed to have been in possession or receipt of or by such last-mentioned person or persons or any of them.”

McDonald-Bishop, J.A. at paragraph 33 of the judgment summarized the effect of Section 14, *“in effect, section 14 renders the possession of co-tenants as separate possessions from the time that they first become joint tenants.”*

- [9] To put it succinctly Sections 3, 14 and 30 when taken together will operate to oust a co-owner, even though that co-owner may hold as a joint tenant. This is an exception to the rule of survivorship that usually obtains with a joint tenancy. Once the twelve-year period has lapsed, and the other co-owner can show that he was in possession as required by law, the title of the ousted co-owner will be extinguished. Although they hold the property as one, for the purposes of the RTA and Sections 3 and 30 of the LOAA their share is distinct.
- [10] The elements of factual possession and the intention to possess can only be determined upon an examination of the evidence and the standard is that of a balance of probabilities.

Evidence for and on behalf of the claimant

- [11] The claimant relied on affidavits filed in support of their claim by Ms. Keera Batten, Ms. Donna Carr, Ms. Nathele Meggoe and Ms. Shelly-Ann Wade.
- [12] Ms. Keera Batten was a formal witness who spoke to the death of Mr. Everton Lynch and the appointment of the Administrator General for Jamaica as the Administrator of his estate. The evidence was unchallenged and as such there is no issue with the fact that the claimant is the proper party to bring this application.

In so far as her evidence made reference to information received from Ms. Donna Carr, I place no reliance on it as it constitutes hearsay.

- [13] Ms. Carr was the common law spouse of Mr. Everton Lynch. She outlined in her affidavit that she had known Mr. Lynch for in excess of thirty years. Their union produced two children and they lived together at the house located at 2b Rivoli Avenue for fifteen years. She averred that he purchased the property as joint tenants with the defendant in or around February 1991. It is her evidence that as far as she was aware he made all mortgage payments from his salary. A copy of two payslips were admitted as an exhibit reflecting same. He was also up to date in the payment of his taxes.
- [14] The family resided at the property from 2004 until the time of his passing on July 15, 2019. At no point during that period did the defendant reside at the premises, and he treated the property as his own and exercised all rights of ownership during that period.
- [15] In a further affidavit she indicated that the defendant visited the premises while Everton Lynch was alive, however she remained on the outside. At some point the police was contacted and upon arrival at the premises she observed discussions between the officers, Mr. Lynch, and the defendant, the defendant subsequently left the premises.
- [16] Ms. Nathele Meggoe is a neighbor and she resides at 2C Rivoli Avenue. She confirmed that Ms. Carr and her daughters moved in to the property in 2004. At the time Everton Lynch had already been living there. She indicated that during the fifteen years Ms. Carr and her children lived there, she never saw the defendant living there and she never saw anyone else exercising any right of ownership over the property.
- [17] Ms. Wade is Ms. Carr's niece and she visited with the family on weekends at the property. In 2010 she resided with them for approximately three months and then

for a year between 2018 and 2019. During her stay there, she observed that Mr. Lynch treated the property as his own and she never saw the defendant.

Evidence for and on behalf of the defendant

[18] The defendant (Ms. Holness) and Mr. Peter Lynch gave affidavits in support of their opposition to the claim.

[19] Ms. Holness averred that she met Everton Lynch some time in 1982. The two had a relationship and they have two children together. They decided to purchase property together, but due to the fact that she did not have a stable source of income, it was Everton Lynch who applied to the credit union for the loan. The agreement was that he would secure the loan and she would furnish the house and provide for the children. In 1994 she commenced her travels to the United States in search of employment. He would travel back and forth to see her and the children and the arrangement was that his brother Peter Lynch would remain at the property while they were away.

[20] It is her evidence that she was surprised when she went to the property in 2006 and saw Ms. Carr. She said she was upset and she ordered Ms. Carr to leave. The police were called and she was given certain advice. She says that while in Jamaica she paid the water bill and the property taxes. She visited again in 2008 and Ms. Carr was still there. This time she called the police. Everton Lynch was present and told her that she could stay in the front room. Because she was so upset she did not remain on the property. Despite all of this she insisted that they were still a couple.

[21] She stated that she gave him cash to maintain the house and as such she never abandoned her property. She gave Ms. Carr verbal notice to leave the property and she paid the utility bills and the taxes. Following his death, she sought legal advice to recover possession of the property.

[22] Mr. Peter Lynch is the brother of the deceased. Mr. Lynch has known both Ms. Holness and Ms. Carr for several years. He confirmed that Ms. Carr went to reside at the property after the birth of her last child, and that she resided there with his brother from sometime in late December 2004 or early January 2005. He was usually tasked with overseeing the property when his brother and Ms. Holness were overseas. He last did so in 2003. He averred that Ms. Holness never abandoned the property as whenever she travelled to Jamaica she would visit with his brother at the property.

Analysis and Discussion

[23] The submissions of Counsel were based primarily on a review of the facts, as it was agreed that the law is clearly defined in this area. The main issue of contention on the part of counsel for the defendant was that the witnesses for the claimant were discredited. The claimant's attorneys-at-law argued the opposite and asked that reliance be placed on the evidence of their witnesses who they advanced as witnesses of truth. Their submissions were duly considered in the analysis of the evidence.

Factual Possession

[24] The uncontroverted evidence is that Everton Lynch was in factual possession of the property from 2004 until his death in 2019. The defendant herself has admitted that she resided in the United States, and she only visited the property on two occasions. On those two occasions, due to confrontations with Ms. Carr and Everton Lynch, the police were called and it resulted in her leaving the property. In cross-examination she was asked if she stayed at the property after 2004 and her answer was, "*no I could not stay there as Ms. Carr was living there.*" It is therefore the finding of this court that Everton Lynch was in factual possession of the property from 2004 until his death in 2019. He exercised physical custody and control of the property during that period to the exclusion of Ms. Holness.

The Intention to possess

- [25] The claimant's evidence in support of the intention to possess rests with Ms. Carr. It was her evidence that Everton Lynch handled all the financial affairs in relation to the property. He made all the mortgage payments and he paid the property taxes. The evidence was supported by the provision of two pay slips which were admitted in evidence as Exhibit 4 (a) and (b). He conducted himself as if he was the sole owner of the property and he did so to the exclusion of Ms. Holness. This is especially evident upon an examination of his actions during the fifteen years since Ms. Carr came to live there. He brought her to live there while she was pregnant with his child. At the time she was also mother to another child, and it is the accepted evidence that Everton Lynch was not the father of this first child.
- [26] It was clearly his intention to start afresh with his new family in this home at 2B Rivoli Avenue. That he did so to the exclusion of Ms. Holness is patently obvious, since, as she indicated in her evidence she was unaware of Ms. Carr's presence until she visited the premises in 2006. Despite her concerns and the interference of the police, when Ms. Holness returned in 2008, Ms. Carr was still living there. Everton Lynch made no effort to change the living arrangements despite her objections.
- [27] Ms. Holness in an effort to refute the case for the claimant, averred that she paid all the utility bills for the property and that she paid taxes as well. She exhibited two receipts from the Tax Administration of Jamaica. Both receipts were dated in the year 2020 and covered the tax period 2017-2020. She also exhibited two notices to quit which were also dated in 2020. She did not provide any documentary proof of utility payments. I did not accept her evidence that she continued to pay the bills for the house following her discovery of the presence of Ms. Carr on her first visit to the property in 2006. The manner in which she was unceremoniously removed from the property on those two occasions mentioned, as well as the fact that she indicated she could not stay at the property due to the

presence of Ms. Carr, suggests that she would not pay any sums to support another woman living in her household.

[28] In re-examination she told the court that in 2008 when the police were called she was advised by them to go to the courts office to get paper work to recover possession of the property. She did not do so until 2020 when she served Ms. Carr with a notice to quit. Although it is not the intention of Ms. Holness that is important, it speaks to the fact that she never made an attempt to exercise control over the property and that she left Everton Lynch to use the property as his own and for his own benefit during the time that Ms. Carr resided there. I therefore find as a fact, that Ms. Holness had no intention of doing anything about the premises until after the death of Everton Lynch.

[29] The evidence of Peter Lynch did not assist Ms. Holness, as he admitted that after 2003 he did not oversee the property he only visited. He cannot add anything to the question of intention, and takes the case for the defendant no further.

Conclusion

[30] In the circumstances the claimant has established on a balance of probabilities that the deceased Everton Lynch was in open, exclusive, undisturbed possession of the property from 2004 to 2019. He paid the mortgage and taxes and treated the property as his own to the exclusion of Ms. Holness.

Order:

1. All legal rights and ownership of the Defendant Zena May Holness, of ALL THAT parcel of land located at 2B Rivoli Avenue, Spanish Town in the Parish of Saint Catherine registered at Volume 1232 Folio 804 in the Register Book of Titles is extinguished.
2. Everton Lynch otherwise called Everton Anthony Lynch, the deceased, is the legal and beneficial owner of ALL THAT parcel of land located at 2B Rivoli Avenue,

Spanish Town in the Parish of Saint Catherine registered at Volume 1232 Folio 804 in the Register Book of Titles absolutely.

3. ALL THAT parcel of land located at 2B Rivoli Avenue, Spanish Town in the Parish of Saint Catherine registered at Volume 1232 Folio 804 in the Register Book of Titles is to be transferred to the Claimant for the estate of Everton Lynch otherwise called Everton Anthony Lynch.
4. The Registrar of the Supreme Court is empowered to sign all documents and/or Transfer Instrument(s) (if any) on behalf of the Defendant in order to facilitate the transfer of ALL THAT parcel of land located at 2B Rivoli Avenue, Spanish Town in the Parish of Saint Catherine registered at Volume 1232 Folio 804 in the Register Book of Titles to the Claimant, should the Defendant Zena May Holness, fail and/or refuse to sign the documents within fourteen (14) days of the date of this Order.
5. Costs to the Claimant to be agreed or taxed.