

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2010/0040

BETWEEN:

GLENDAN HANLEY

Claimant

AND

COLIN HANLEY

Defendant

Appearances:

Mr. John Fuller for the Claimant

Ms. E. Deniscia Thomas for the Defendant

2014: December 01
December 11
December 12
2015: April 29

JUDGEMENT

- [1] **Cottle, J.:** The parties were married in 1972. In 1975 a parcel of land at McKinnons in Antigua was purchased from the Government of Antigua and Barbuda. The property was registered in the sole name of the defendant. The claimant says that she contributed equally to the purchase price of the parcel. The defendant denies this.
- [2] The defendant secured a loan and a home was built on the land. The claimant says the loan was joint and she assisted in the repayment. Again this is denied by the defendant.

[3] In June 1981 the parties moved into the house that was to be the matrimonial home. Towards the end of 1983 the defendant went to England to pursue studies. Unhappy differences arose. During a visit to Antigua in 1985 matters came to a head. The claimant sought injunctive relief to prevent the defendant from entering the matrimonial home. The defendant gave the court an undertaking that he would not return to the matrimonial home until the conclusion of the substantive claim. He did not return to the matrimonial home until 2001 and again in 2010.

[4] The claimant has now filed the present claim. She seeks the following relief:-

1. " An Order directing the Registrar of Lands that the Claimant be registered in the Register of Lands in Antigua and Barbuda as the sole registered owner of Parcel 138 of Block 45 1696B of McKinnons Registration Section."
2. "A Declaration that the Claimant has acquired prescriptive title to the said parcel 138 of Block 45 1696B of McKinnons Registration Section."
3. "An Injunction restraining the Defendant whether by himself or his servants or agents or howsoever otherwise from entering upon the said parcel 138 of Block 45 1696B of McKinnons Registration Section."
4. "A Declaration that the equity of the Defendant, if any, in the said parcel has been abandoned and/or waived and/or released by the Defendant in favour of the Claimant."
5. "A Declaration that the Claimant is entitled to sole possession of the said parcel."
6. "A Declaration that the Claimant's equity has overridden the equity of the Defendant in the said parcel."
7. "A Declaration that the Defendant is stopped from claiming any equity in the said parcel."

[5] The defendant denies the claimant is entitled to the relief she seeks. He counterclaims for:-

1. "A Declaration that the Claimant has not acquired and is not entitled to prescriptive title to the property registered and described as: **Registration Section: McKinnon's; Block: 45 1696B; Parcel: 138**"

2. "A Declaration that the Claimant is not entitled to possession of the aforementioned property."
3. "A Declaration that the Claimant is a mere licensee."
4. "An Order that the Claimant and her nephew, Rohan Huggins, forthwith deliver up possession of the aforementioned property."
5. "An Order directing the Registrar of Lands to remove cautions lodged against property registered and described as: **Registration Section: McKinnon's; Block: 45 1696; Parcel 138 and Registration Section: Crabbs Peninsula & Neighbouring Island; Block: 21 2591C; Parcel: 131**"
6. "Damages for interference with property"
"Further and/or Alternatively:
7. Occupational rent for such time and for such period as the Court thinks just.
8. Costs"

[6] As can be seen from her pleadings, the claimant advances several reasons to ground her claim to be entitled to ownership of the property in issue.

Abandonment

[7] Cap 374 of the Laws of Antigua and Barbuda is the Registered Land Act. By virtue of section 23, the effect of registration of any individual as proprietor with absolute title is to rest in that individual absolute ownership of the parcel of land. The legislation makes no provision for abandonment of his interest by a registered proprietor. Unless an adverse possessor is able to dispossess him as is discussed below, the registered proprietor remains the absolute owner without regard to his physical absence from the land. The claimant has advanced no legal basis on which to conclude that the defendant has somehow abandoned his statutory entitlement as registered proprietor.

[8] The claimant avers that her equity has overridden the equity of the defendant in the parcel.

[9] This averment was not clearly articulated. In her affidavit in support, the claimant says that she has paid for the upkeep and maintenance of the property since 1983. The defendant has paid

nothing. I am unclear how this fact by itself will operate to gain her any equity in the property. She was married to the defendant when they went into occupation. In 1985 the defendant gave his undertaking not to enter the house. The claimant remained in occupation. Naturally she bore the cost of upkeep of the home while she remained in exclusive occupation. Any outgoings in this regard by her were not at the request of the defendant.

[10] At the trial no issue of proprietary estoppel was advanced. I can find no reason to grant the relief the claimant seeks on this basis as she has failed to establish any legal justification for interfering with the defendant's legal rights under this head.

[11] The real thrust of the claimant's case seems to be that she is claiming to have acquired the property by adverse possession.

[12] Section 135 of the Registered Land Act (as amended) provides that the ownership of land can be acquired by peaceable open and uninterrupted possession without the permission of any person lawfully entitled to such possession for a period of twenty years.

[13] In the present case the claimant pleads that she contributed equally to the purchase of the parcel of land with the defendant. She in effect claims to be a co-owner in equity. It is difficult to reconcile this position with a claim to have entered into possession without the consent of the defendant. At the very least she went into occupation as the wife of the defendant. This is inconsistent with any suggestion that she went into possession without his consent. In addition to this she must have had the requisite animus possiderdi. Clearly it cannot be said that a wife who enters into occupation of the matrimonial home does so with the intention to possess the home to the exclusion of her husband.

[14] In 1985 the defendant gave his undertaking not to enter the house until the conclusion of a claim that the wife had brought. After he gave that undertaking he returned to England leaving the matter in the hands of his legal representative. The claimant took no steps to prosecute the claim as she was satisfied with the undertaking. It was not until 2010 that the defendant tried to re enter. The wife again sought and obtained an interim injunction restraining him from entering.

- [15] Against this factual background I conclude that the claimant has not satisfied the requirements of section 135 of the Registered Land Act to acquire ownership. She simply did not go into possession without the consent of the defendant.
- [16] Counsel for the claimant emphasized the 25 years absence of the defendant from the property. This cannot be held against the defendant for any attempt to re enter might have amounted to a contempt of court for breach of his undertaking.
- [17] I conclude then that none of the arguments advanced by the claimant afford any basis in law to interfere with the rights of the defendant as registered proprietor.
- [18] In his counterclaim the defendant prays for occupational rent. At the trial this was not pursued. I therefore make no order in that regard.
- [19] Judgement is entered for the defendant on the counterclaim. It is declared that the claimant has acquired no prescriptive title to the property. She is not entitled to possession. The Registrar is directed to remove the caution registered against the property by the claimant.
- [20] The court declares that the claimant remains a mere licensee. The claimant will pay the defendant's costs in the sum of \$7, 500.00.

Brian Cottle
High Court Judge