

## THE HIGH COURT

[2015/3879 P]

BETWEEN

PATRICK HAMILTON

PLAINTIFF

AND

ACC LOAN MANAGEMENT LIMITED, DECLAN TAITE, JOHN COULSTON AND DERICK FORDE

DEFENDANTS

JUDGMENT of Mr. Justice O'Connor delivered on the 18th day of March, 2016

**Introduction**

1. The issue in this case is whether the plaintiff is entitled to be registered as owner of nearly nine hectares or some 23 acres of lands in the townland of Drumcanon which are contained in Folio 14587 of the Register of Freeholders, County Monaghan ("the relevant lands") by reason of adverse possession.

The parties

2. Apart from the plaintiff, the only other parties who took an active part at the trial leading to this judgment are the second and third named defendants ("the receivers"). The receivers were appointed by the first named defendant ("the bank") which had a charge from the plaintiff's brother dated 2nd November, 2006.

3. It is not necessary to outline the events leading to the agreement between the receivers and the fourth named defendant for the sale of the relevant lands but the following are some relevant facts which are agreed:

1. The plaintiff has been in possession of the relevant lands since his father died in June, 1992;
2. Other lands in the townland of Carnaveagh were transferred to the plaintiff in 1994 from the plaintiff's late mother ("Mrs. Hamilton") on which the plaintiff has built his house where he has resided with his wife;
3. Since the early 1990s the plaintiff had his own herd number and has applied successfully for area aid or similar assistance as owner of the relevant lands;
4. Mrs. Hamilton became the owner of the family home and lands which she leased to a company that operates a wind farm. The home and the wind farm are a number of miles away from the relevant lands;
5. Mrs. Hamilton died on the 21st January, 2015, following a diagnosis made a number of years previously that she suffered from Alzheimer's disease;
6. Agents for the bank came into possession of a copy deed of assent sworn by Mrs. Hamilton on the 25th October, 2006, in her capacity as the personal representative of the plaintiff's father. By this deed Mrs. Hamilton sought to be registered as owner of four different folios including Folio 14587 containing the relevant lands. Inserted into this deed in manuscript was: "I am entitled to be registered as full owner of the said property". The author of the manuscript is not identified and the manuscript insertions were not initialled by Mrs. Hamilton nor the practising solicitor before whom the form of assent was sworn on the 25th October, 2006;
7. A copy deed of transfer from Mrs. Hamilton purporting to be the beneficial owner of the relevant lands to the plaintiff's brother dated the 26th October, 2006, was also produced with a deed of mortgage dated 2nd November, 2006, in favour of the bank for the relevant lands and for the lands owned by the plaintiff's brother;
8. On the 13th June, 2012, after the plaintiff's brother had been adjudicated bankrupt by the High Court in Northern Ireland on the 3rd May, 2012, the purported title of the plaintiff's brother to the relevant lands was registered on Folio 14587 together with the 2006 charge in favour of the bank;
9. Following the appointment of the receivers by the bank, attempts were made on behalf of the receivers to take possession of the relevant lands and the receivers entered into a contract for the sale of these lands to the fourth named defendant.

**Animus possidendi**

4. The parties have agreed that the issue for the Court to decide relates to the nature and extent of the plaintiff's possession of the relevant lands. More particularly, did the plaintiff exclude his mother from control of the relevant lands and did he manifest an intention to do so? *Animus possidendi* is the term which connotes the thrust of these questions.

**The law**

5. Section 13(2) of the Statute of Limitations 1957 provides that no action to recover land shall be brought after the expiration of twelve years from the date on which the right of action accrued to the person bringing the claim.

6. Another way of approaching the nub of the controversy which arises is to ask whether the plaintiff used the relevant lands for twelve years after the death of his father for himself or in some way with his mother's conditional consent to possession.

7. The excursus of Black J. in *Convey v. Regan* [1952] I.R. 56 is the *fons et origo* for the law in this area. It was followed by Slade J. in *Powell v. McFarlane* [1977] 38 P & CR 452 and reviewed by Clarke J. in *Dunne v. Iarnrod Eireann* [2007] IEHC 314 who posed questions for determination which might be rephrased for application in this case as follows:-

1. Is there a continuous period of twelve years during which the plaintiff was in exclusive possession of the relevant lands to an extent sufficient to establish an intention to possess the land itself rather than to fulfil some joint enterprise or other agreement with Mrs. Hamilton?

2. Was the contended for period of possession broken by an act of possession by Mrs. Hamilton?

### **The plaintiff's evidence**

8. The plaintiff impressed the Court with his candour. Counsel for the receivers rightly assured the plaintiff in cross-examination that it was clear that the plaintiff made no misrepresentation in his affidavit or oral evidence.

### **Findings of fact**

9. The plaintiff's account of using the relevant lands for his own farm as opposed to some notional farm for the family or with Mrs. Hamilton as contended for by the receivers is accepted by the Court. Despite careful cross-examination based on the transfer of a one-acre plot by Mrs. Hamilton to the plaintiff's sister in 2006, the plaintiff maintained that the legal formalities for transferring the relevant lands by deed did not arise for discussion. The evidence established that the transfer of the lands actually registered in Mrs. Hamilton's name to the plaintiff's sister was given effect in anticipation of seeking planning. The transfer of lands in 1994 to the plaintiff and the plaintiff's wife from Mrs. Hamilton was also to get planning permission to build the house in which the plaintiff resides with his wife.

10. It was also unequivocally confirmed by the plaintiff also that he alone was involved in farming the relevant lands, seeking grants, and maintaining the herd number.

11. The plaintiff in reply to specific questions stated that he "definitely" was not aware of the deed of transfer to his brother in 2006 until the events leading to these proceedings in 2013. Counsel rightly did not explore what would have happened if he had known, because in effect the plaintiff by his own account - which is not contradicted - was in exclusive possession of the relevant lands from 1992 to 2006 (fourteen years) in any event.

12. Mrs. Hamilton was registered in 1997 as the owner of Folio 14955 of County Monaghan containing 11.2 hectares. The plaintiff explained that those lands were transferred from his grandfather's estate. These are the lands which were leased in September, 2008 to a company which operates a wind farm. Again, the Court was not persuaded that this in some way undermined the plaintiff's assertion that he was in exclusive possession of the relevant lands for his own farming and aid applications.

13. The plaintiff was pressed about the reference in his solicitor's letter dated the 18th August, 2014, which referred to his leasehold interest. This leasehold interest was not asserted after that letter. The plaintiff clarified that there was a lot of emotion arising from the confusion caused by the receivers' offer for sale of the relevant lands and of lands which were actually purchased by his brother in the vicinity. It is worth noting at this stage that the plaintiff's brother had purchased a few acres and had allowed the plaintiff to use them for his farm. The plaintiff was willing to buy these few acres from the receivers.

14. Suffice to say that the said letter from the plaintiff's solicitor on its face would have helped to defeat the plaintiff's claim were it not for the confusion and emotion which flowed from his mother's condition and the very late disclosure to the plaintiff of the somewhat irregular looking transactions in 2006. The plaintiff was faced with an astonishing scenario and his bankrupt brother, suffering from a mental health problem in Northern Ireland, did not assist in explaining matters. The Court accepts that the plaintiff never had a lease of the relevant lands and that he cannot be bound by a letter from his solicitor which does not recount the entire history of the plaintiff's involvement with each portion of the lands mentioned in the two folios identified in the subject line of that letter.

15. There was no evidence to infer any improper motive on the part of the plaintiff for delaying his application to register the relevant lands in his name until after the death of Mrs. Hamilton on the 21st January, 2015. The plaintiff understandably did not feel that his late mother could or should be troubled given her condition and the plaintiff's *de facto* exclusive occupation, control, and use of the lands as part of his own farm.

### **Bank of Ireland**

16. By without prejudice letter dated the 21st August, 1992, from the Bank of Ireland addressed to the plaintiff, it was offered that the debt owed by the plaintiff's father and himself could be discharged by the payment of £50,000.00. In the end this sum was paid for from the sale of five acres and over subsequent years from the plaintiff's farm income. The plaintiff explained that Mrs. Hamilton had her own regular income from "her bit of a job" and that the plaintiff paid off the bank from sales of his own cattle and further borrowing. Therefore there is no basis arising from these facts to suggest that the plaintiff's occupation and control of the relevant lands was in some way a joint enterprise with Mrs. Hamilton. Mrs. Hamilton's passiveness allowed the plaintiff to acquire an adverse possession title as has arisen in other farming families in Ireland.

17. For the sake of clarity, the Court noted that a "little parcel of land" contained in Folio 14587 was sold around 1993 and the proceeds of same were applied to the reduction of the debt agreement with Bank of Ireland. This fact does not take from the continuous period of occupation and control by the plaintiff of the relevant lands for in excess of twelve years.

### **Conclusion**

18. The Court finds that there was a continuous period in excess of twelve years during which the plaintiff was in exclusive possession and control of the relevant lands, and that that possession was not broken by any act by Mrs. Hamilton. The plaintiff's claim for a declaration that he is in adverse possession and is entitled to be registered as owner of the relevant lands contained in Folio 14587 of the Register of Freeholders, County Monaghan may therefore be granted. The parties are invited to make submissions in respect of the precise order which ought to be made.