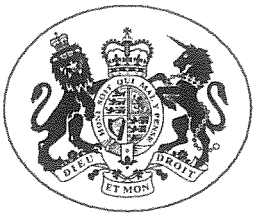


[2019] UKFTT 0507 (PC)

REF 2018/0526

IN THE FIRST-TIER PROPERTY TRIBUNAL
(LAND REGISTRATION)

Before: Judge Clarke Q.C., 9 July 2019

BETWEEN:-

JAMES MURPHY

Applicant

and

(1) PRABHAT PARMAR
(2) THOMAS WHITE

Respondents

Property Address: 8A Tangmere Way, London NW9 5WW
Title Number: AGL436927

SUBSTANTIVE ORDER

UPON HEARING Counsel for the Applicant and Counsel for the First Respondent (the Second Respondent having been debarred from taking any further part in these proceedings save as to costs)

IT IS DIRECTED that: –

1. The Chief Land Registrar shall give effect to the Applicant's application dated 16 March 2017 in full.

2. If the Applicant wishes to apply for his costs, he should do so by filing written submissions and a completed CPR form N260 by 4 PM on 31 July 2019

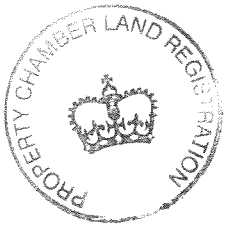
3. Any submissions in opposition or observations on the quantum of costs claimed should be filed and served by the First Respondent by 4 PM on 20 August 2019.

4. The Applicant may file and serve any observations in reply by 4 PM on 30 August 2019.

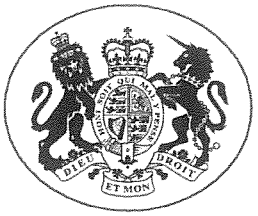
5. These submissions shall be referred to the Judge Clarke Q.C for further consideration.

Dated this 9th day of July 2019

Ian Clarke QC



A JUDGE OF THE FIRST-TIER PROPERTY TRIBUNAL (LAND REGISTRATION)



[2019] UKFTT 0507 (PC)

REF 2018/0526

IN THE FIRST-TIER PROPERTY TRIBUNAL
(LAND REGISTRATION)

Before: Judge Clarke Q.C., sitting at the First-tier Tribunal, Third Floor, 10 Alfred Place, London WC1E 7LR on 17 and 18 June 2019

BETWEEN:-

JAMES MURPHY

Applicant

and

(1) PRABHAT PARMAR
(2) THOMAS WHITE

Respondents

Property Address: 8A Tangmere Way, London NW9 5WW
Title Number: AGL436927

SUBSTANTIVE DECISION

ADVERSE POSSESSION – Schedule 6, paragraph 5(2) – whether adverse possession by person to whom land "given" – equity by estoppel – minimum equity.

Bridges v Mees [1957] 1 Ch. 475

[1] By an application dated 16 March 2017 in form ADV1, the Applicant, Mr Murphy, applied for registration as the proprietor of 8A, Tangmere Way, London NW9 5WW ("**the property**") by virtue of his adverse possession. The First Respondent, Mr Parmar, is the tenant residing at the property; the Second Respondent, Mr White, is the registered proprietor. Mr White (whose address for the purpose of these proceedings is

that recorded on the Register) has taken no part in this reference: following an unless order dated 1 February 2019 requiring the service of a defence, Judge Hewitt debarred him from taking any further part in these proceedings save as to costs. Ordinarily, one might expect the registered proprietor to be at the forefront of the defence to a claim of this nature. However, in the circumstances of this case, that state of affairs is perhaps not as surprising as it might first appear. Certainly, neither Mr Murphy nor Mr Parmar have seen Mr White for over 20 years. Instead, the opposition to Mr Murphy's application has been that of Mr Parmar.

The parties' respective cases

[2] The application for registration has been brought under Schedule 6 of the Land Registration Act 2002 in form ADV 1 dated 16 March 2017. In that form, Mr Murphy indicated that reliance would be (and is) placed on paragraph 5(2) of Schedule 6 in the event of objection (which objection was subsequently received from Mr Parmar and treated as such by HM Land Registry). Paragraph 5(2) contains "the first condition" (being one of the conditions which must be met in order for an applicant to be registered as proprietor) and requires it to be "*unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant, and the circumstances are such that the applicant ought to be registered as proprietor*".

[3] Mr Murphy says his entitlement to be registered as proprietor arises in the following circumstances.

[4] Mr Murphy, who was a builder, claims that he worked for Mr White during 1992 – 1995 and that on some jobs, his bill went unpaid such that by the time Mr White acquired the property (then simply a building plot) in or about May 1994 (Mr White was registered as proprietor on 23 May 1994), Mr Murphy was owed £25,000. Mr Parmar accepts that at this time the was an ongoing business relationship of some description between Mr Murphy and Mr White.

[5] Mr White intended to build on the property and to engage Mr Murphy to do so. However, following acquisition, it became clear that the development would be more expensive and difficult than first envisaged. The local authority required footings to be

dug to a significant depth (10 feet) because of the proximity of large trees and the site was crossed by pipes and electricity cables apparently not revealed on survey. As a result, and in the Summer of 1994, Mr White told Mr Murphy that he no longer intended to develop the property.

[6] As a result, Mr Murphy (or more accurately, his friends, Brendan Flannery and Colin Collins, neither of whom gave evidence) discussed with Mr White the acquisition of the property by Mr Murphy in lieu of the money owed to Mr Murphy. On that basis, it is said that Mr White agreed to transfer the property to Mr Murphy and sometime prior to the commencement of the construction on the property in September/October 1994, Mr White handed the Land Certificate to the property to Mr Murphy whilst in the Honeypot public house. The original Land Certificate was, indeed, adduced in evidence. On the back of this arrangement, Mr Murphy commenced and completed the construction of the house on the property.

[7] The construction works were substantially finished (at least internally) by February 1995. The property was let to Mr Parmar in the circumstances I described below from 7 February 1995. Subsequent to that tenancy and as a result of further conversation which Mr Flannery or Mr Collins had with Mr White, Mr White is said to have provided a manuscript letter dated 15 May 1995 addressed to Mr Murphy which, insofar as is material, states

> "*I, Tom White of 75B Sheldon Road N18 bequeath folio number NGL 715496* [of which the property forms part] *to James Murphy... In LEO £25,000 given to me by James Murphy over a two-year period 1992 to 1993.*
> *I hereby sign over the above-named parcel of land No NGL 715496 to cover my debt.*
> *This is been agreed by myself and James Murphy as a fair and final settlement.*
> *Signed [T.White]*
> *15 May 1995.*

[8] As for the circumstances surrounding the initial letting of the property, prior to February 1995 Mr Murphy approached Mr Joshi who, as RAC Consultants, operated a lettings agency, in order to find a tenant to occupy the property (it being said that by then it was apparent that the property was not likely to be easily saleable, given the

market and its location). It is common ground that Mr Joshi introduced Mr Parmar to the property and was instrumental in Mr Parmar's tenancy of that property from 7 February 1995. Since that date, Mr Parmar and his family have been in occupation of the property. Furthermore, whilst it is not in dispute that Mr Murphy has (as a matter of fact) collected the rental income from the property either from Mr Joshi's office or from Mr Parmar himself or had it paid directly to him by the local housing authority, it is Mr Parmar's case that Mr Joshi was acting on behalf of Mr White when he arranged the letting of the property to Mr Parmar and that Mr Murphy acted and received the rent as Mr White's agent and accordingly has not been in adverse possession of the property such that is claim can be made out. In support of this submission, Mr Parmar points to various documents: see below.

The issues

[9] The agreed issues are as follows: –

a. was Mr Murphy in possession of the property for the period 10 years ending on the date of the application? To that end, (i) did Mr Murphy take possession of the property from Mr White in 1994 or 1995 and (ii) is Mr Parmar the tenant of Mr White and, if so, when did the relationship of landlord tenant begin

b. was Mr Murphy's possession adverse

c. Did Mr Murphy build a house on the property in reliance on a promise made to him by Mr White that he could have the property? Does the letter of 15 May 1995 create an estoppel in Mr Murphy's favour? Are the circumstances such that in either or both cases, Mr Murphy ought to be registered as proprietor?

The evidence

[10] The events with which I am concerned started over 20 years ago. In those circumstances, the memories of the respective witnesses will have been dimmed and, to an extent, unconsciously moulded by various factors, including their age and health (Mr Parmar, particularly, has not enjoyed good health), the passage of time and subsequent events, not least Mr Murphy and Mr Parmar's protracted history of litigation in the County Court for possession and arrears of rent. In such circumstances, events of 15 or 20+ years ago recalled with crystal-clear certainty must receive careful scrutiny and due allowance must be made for vagueness and even some inconsistency in matters of recollection. Conversely, matters which are

corroborated by other witnesses or by more contemporary documents are likely to be more reliable.

[11] Mr Parmar's case makes a number of serious allegations of fraud, which it is convenient to consider at this juncture:-

a. There are two tenancy agreements dated 7 February 1995 each purporting to demise the property to Mr Parmar but one naming Mr Murphy as the landlord at a rent of £736 per calendar month the other with RA Consultants (Mr Joshi's lettings agency) as landlord at a monthly rent of £910 per month. Mr Parmar pleads that the former tenancy agreement "*is a total fabrication*".

b. A later tenancy agreement dated 12 February 2002 with Mr Murphy as landlord Mr Parmar tenant contains Mr Parmar's signature. However, that signature is said to have been obtained by Mr Murphy having provided Mr Parmar with a folded document to sign as a receipt, which Mr Parmar did believing it to be as described.

c. Finally, it is said that letter dated 15 May 1995 "*is likely to be a further fraudulently created document produced by the Applicant*". The basis for this is said to include a dissimilarity between the purported signature of Mr White with that contained on two documents dated 30 May 1997, one of which is (in terms of text) an augmented version of the shorter document. Each purports to be from Mr White and addressed to the London Borough of Barnet. The material text (with the additional text underlined) reads as follows: –

> *I, Mr Thomas White, confirm that I am the owner of 8a Tangmere Way, NW9 which has been rented out to Mr Parmar through my agent RA Consultants, and my business partner, Mr Murphy has been authorised by myself to deal with my matters.*
>
> *[Signed T White]* *[Signed J Murphy]*

This letter and its augmented version are said by Mr Parmar in his witness statement to have been "*obtained for me*" by RA Consultants whilst in evidence, he told me that the document was written out at RA Consultants' office, with all

participants in the same room. Mr Joshi could not recall that event (he himself had never met Mr White) and was certain that the document was not written in his office because in those circumstances he considers that he/RA Consultants would have been a party.

[12] As for the "first" tenancy agreement dated 7 February 1995, neither Mr Murphy nor Mr Joshi were cross-examined on the basis that it was a forgery. More significantly, it is also worthy of note that in an application notice in the County Court at Willesden in claim number A9QZ537C dated 26 October 2015 (which application notice is verified by a statement of truth by Mr Parmar), Mr Parmar deposes to an original tenancy agreement under which rent was payable at the rate of £736 per month (i.e. the rate reserved in the impugned "first" tenancy agreement, but not the second). Had Mr Parmar believed this to be a forgery, that statement would not have been made. Moreover, Mr Parmar's explanation of how this information came to be contained in a verified application notice (he was ill and under pressure, with the matter being transcribed by his brother) appeared to me to be tendered in order to distance Mr Parmar from a document which he considers to be unhelpful to his case but which to my mind undoubtedly contained that communicated to his brother at the material time.

[13] In cross examination in the morning of the second day of trial, a substantial degree of greater detail was given by Mr Parmar in connection with the obtaining of his signature on the 2002 tenancy agreement. Mr Parmar described how Mr Murphy came to his house at about 7 PM asking for a receipt for a section 21 notice and handed him a folded document which he signed (still folded) in his dining room, thinking it was (as described) a receipt. As these events were occurring, his daughter, a police officer, came down from upstairs, took the document and photocopied it (unfolded). The signed, but apparently unread document was returned to Mr Murphy, Mr Parmar keeping the copy and not realising it was part of a tenancy agreement (which plainly it is). In his witness statement, Mr Parmar states that a District Judge held in proceedings in the County Court at Willesden that this tenancy agreement was not genuine.

[14] In the absence of any transcript or note of judgment, I am not satisfied that any such finding was, in fact, made; the dismissal of the County Court proceedings does not, of necessity, lead me to conclude that any such finding must have been made. (Moreover,

and for the sake of completeness, I a m not satisfied on the evidence adduced that any issue estoppel or res judicata has arisen in any regard as between these parties). Moreover, I find Mr Parmar's explanation of how his signature came to be applied to the document in question to be implausible. It is not foreshadowed in his witness statement dated 13 February 2019. In evidence, he told me that at the time he did not understand what a section 21 notice was. I reject the suggestion that in those circumstances and in circumstances in which the document came to be copied that no one looked at it or its contents. In my judgment, the explanation of his signature being obtained by deception is another example of Mr Parmar attempting to distance himself from a document which he considers to be unhelpful to his case.

[15] Mr Parmar criticises the letter dated 15 May 1995 by reference to its terminology, its late production (in the sense that it is said not to have been produced in any of the earlier litigation) and the difference in the signature purporting to be Mr White's when compared with the documents dated 30 May 1997. I gain no assistance from this latter comparison because I am not persuaded that the signature on the later documents is that of Mr White. The change in Mr Parmar's narrative in relation to how the documents were created and provided to him leads me in this regard is to accept Mr Murphy's evidence that he had never seen them before, not least because it is consistent with the evidence of Mr Joshi as to RA Consultants likely involvement in their production

[16] As to the other criticisms of the letter dated 15 May 1995, Mr Murphy explained the authorship of the document and was not directly challenged on whether it had been forged by all for him or why it had not been produced earlier in the other claims against Mr Parmar. There is nothing in the criticisms of its drafting; in circumstances where none of those involved in its negotiation or transcription were lawyers, to endeavour to establish only a testamentary intention by the use of "bequeath" for example is, in my judgment, going too far. Not without some hesitation, I accept Mr Murphy's account and that the letter was provided by Mr White in order to provide assurance for their earlier agreement. Irrespective of that document, I found Mr Murphy's explanation of that earlier agreement to be credible in itself. Moreover, Mr Murphy is in possession of the Land Certificate which would have been the only document of title then held by Mr White. I accept his explanation of why and the

circumstances in which he came into possession of it; certainly, no other explanation has been put forward or explored with any witnesses. I remind myself that no one (including Mr Parmar) has heard anything of Mr White since 1997. These are, to my mind, the actions of an individual who no longer considers himself having an interest in the property.

[17] Finally, having mentioned the earlier agreement between Mr Murphy and Mr White in relation to the property, I should record my conclusions in that regard. I am satisfied that Mr White owed Mr Murphy £25,000; that having acquired the property, Mr White did not see fit to proceed with its development and that it was agreed prior to the commencement of construction (which itself began in or about September/October 1994) that Mr Murphy could have the land instead of payment. It was at this stage that the Land Certificate was handed over and that it was because of this that Mr Murphy proceeded to build the house on the property.

[18] Having made these findings, I now turn to the agreed issues between the parties.

Was Mr Murphy in possession of the property for the period 10 years ending on the date of the application? To that end, (i) did Mr Murphy take possession of the property from Mr White in 1994 or 1995 and (ii) is Mr Parmar the tenant of Mr White and, if so, when did the relationship of landlord tenant begin

[19] I remind myself that the question of possession and adverse possession must be measured against the freehold owned by Mr White.

[20] For the reasons given above, I am satisfied that Mr Murphy took possession of the property from Mr White prior to the construction of dwelling on it sometime in later 1994, i.e. well before Mr Parmar's introduction to the property and his tenancy. As a matter of chronology, there has been 10 years' possession by Mr Murphy prior to the ADV 1.

[21] On one level, there is no dispute when Mr Parmar's tenancy began – 7 February 1995. The gravamen of the point in issue in (ii) above is whether or not that tenancy was granted by those acting on behalf of Mr White.

[22] In this regard, Mr Parmar points to two documents.

[23] The first is the letter/letters dated 30 May 1997, which I have considered above.

[24] The second is a tenancy agreement dated 8 February 2000 made between RA Consultants "*agent for owner, Mr White*" and Mr Parmar. Mr Murphy told me that he had never seen this tenancy agreement prior to this litigation. Mr Joshi was unable to explain the inclusion of those words, the agreement being in an employee's handwriting. Mr Joshi's evidence was clear however: RA Consultants were not acting for Mr White but were acting for Mr Murphy.

[25] This tenancy agreement (and, indeed, the letter(s) dated 30 May 1997) were obtained from the London Borough of Barnet. Why then might these documents have come into being? Mr Parmar was, from 1996 at least, in receipt of housing benefit paid by the Barnet. He told me that in about 1996, Barnet identified that Mr White was the registered legal proprietor of the property and that in the absence of a letter of authority from him, they would not pay housing benefit. Accordingly, there was an interruption of rental payments for about 10 months until the letters dated 30 May 1997 were produced. The tenancy agreement dated 8 February 2000 is, on its face, written to address the same concern. I am not in a position on the evidence that was led before me to determine who produced these documents; however, I am satisfied that they are not reliable as statements of Mr Murphy's capacity or that of RA Consultants (i.e. agent for and on behalf of Mr White) because of Mr Joshi's evidence as to the identity of RA Consultants' client (which, as proprietor, he would know), the prevailing circumstances with Barnet and because of my conclusions as to the arrangements made by Mr Murphy with Mr White in 1994. Further support for this conclusion can be gleaned from the application notice referred to above. It talks of RA Consultants being "*my original landlord*" and of Mr Parmar's belief that they were tenants of Mr Murphy who, subsequently, "*as landlord wanted to increase the rent*". No mention is made of any agency or either having some representative capacity on behalf of Mr White.

[26] In those circumstances, I conclude that it was Mr Murphy acting in his own capacity who retained RA Consultants to let the property and who has, in that capacity,

received Mr Parmar's rent and housing benefit ever since. It is common ground that such an individual is in possession not only of the reversion but also of the land itself.

Did Mr Murphy build a house on the property in reliance on a promise made to him by Mr White that he could have the property? Does the letter of 15 May 1995 create an estoppel in Mr Murphy's favour? Are the circumstances such that in either or both cases, Mr Murphy ought to be registered as proprietor?

[27] As I have indicated above, I am satisfied that it was in reliance on Mr Whyte's promise that Mr Murphy could have the land, the Mr Murphy proceeded to build the dwelling house at his own expense. In those circumstances and because Mr Murphy forewent the outstanding debt and assumed the risk and responsibility of constructing the dwelling house, I am satisfied that it would be unconscionable if, having established adverse possession, he were not to be registered as proprietor.

[28] I am unable to accept the submission the letter dated 15 May 1995 created an estoppel in favour of Mr Murphy, not least because I cannot identify any clear detriment suffered by him in reliance upon that letter, which postdates the completion of the construction of the dwelling house.

Was Mr Murphy's possession adverse?

[29] Mr Parmar denies that the Murphy's possession was adverse because, on his own case, he was voluntarily given the estate and possession of it, in circumstances where it cannot be described as "adverse".

[30] Under section 116 of the Land Registration Act 2002, an equity by estoppel has effect in relation to registered land at the time the equity arises; in my judgment, the equity had arisen prior to the initial tenancy, by virtue of the almost complete construction of the dwelling house: see above. In such a case, can Mr Murphy's possession be properly described as adverse?

[31] In my judgment, it can. In light of my findings above, the registered proprietor is a trustee for Mr Murphy and so his position is analogous with a purchaser who is let into

possession under a contract for the sale of land in circumstances where the beneficial interest has passed to him: see Bridges v Mees [1957] 1 Ch. 475. His possession is accordingly adverse.

Conclusion

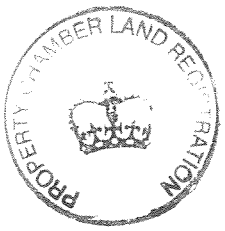
[32] Accordingly, I will direct the Chief Land Registrar to give effect to Mr Murphy's application dated 16 March 2017 in full.

[33] During the hearing, I raised whether the letter dated 15 May 1995 could have amounted to a transfer of equitable title pursuant to section 53 of Law of Property Act 1925, such that paragraph 5(3) of Schedule 6 was satisfied (some other reason why the applicant is entitled to be registered as proprietor of the estate). In light of my findings above, I need not consider whether and to what extent reliance upon a different paragraph be open to Mr Murphy nor is it a legal consequence which I need to explore.

[34] I canvassed with the parties at the conclusion of the hearing whether or not costs and other consequential matters should be dealt with on paper. If Mr Murphy wishes to apply for his costs, he should do so by filing written submissions and a completed CPR form N260 by 4 PM on 31 July 2019. Any submissions in opposition or observations on the quantum of costs claimed should be filed and served by Mr Parmar by 4 PM on 20 August 2019. Mr Murphy may file and serve any observations in reply by 4 PM on 30 August 2019. These submissions will be considered by me thereafter.

Dated this 9th day of July 2019

Ian Clarke QC



A JUDGE OF THE FIRST-TIER PROPERTY TRIBUNAL (LAND REGISTRATION)