[2017] UKFTT 0638 (PC)

REF/2016/0276

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Peter Noble

APPLICANT

and

Rodney Hamer and Janet Hamer

RESPONDENT

Property Address: Land Lying to the south of Stamford park Road, Altrincham WA15 9EN
Title Number: MAN254326

ORDER

On hearing the Applicant, and Mr Rodney Hamer for the Respondents,

IT IS ORDERED as follows:

The Chief Land Registrar is to cancel the original application dated 3 September 2015 for registration of title by adverse possession.

Dated this 7 July 2017

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL

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DECISION

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1. This is a dispute between former business associates about a piece of land that lies behind no 3 Ashfield Road, Altrincham and is part of the registered title to that property. I shall refer to the land that is the subject of the dispute as "the garden plot" although it is some years since it was actually a garden. The houses on that side of Ashfield Road all have a little yard just outside at the back, and in addition a garden plot separated from the house by an alley. Number 3 is no exception; the garden plot is therefore not contiguous to the house and its yard. It is, however, directly adjacent to a

house on Stamford Park Road where the Claimant, Mr Noble, formerly lived but which has now been re-possessed.

2. Mr Noble applied to HM Land Registry on form ADV1, on 3 September 2015, for registration as proprietor of the garden plot by virtue of adverse possession. Mr and Mrs Hamer, the registered proprietors of number 3 Ashfield Road, objected, and the dispute was referred to this Tribunal. I visited number 3 Ashfield Road and the garden plot on 4 July 2017, and conducted a hearing in Manchester on 5 July 2017 at which Mr Noble and Mr Hamer presented their respective cases without legal representation. I am grateful to both for their assistance. Neither called any witnesses. Mrs Hamer did not attend the site visit or the hearing. I have referred just to Mr Hamer in the decision that follows, without intending any disrespect to Mrs Hamer and on the basis that Mr Hamer spoke for both of them.
3. I have decided that Mr Noble's claim fails. In the paragraphs that follow I give a very brief explanation of the law, then look at adverse possession, and finally at proprietary estoppel.

The law

4. Title to the garden plot is registered, and has been at least since before 1999. Mr Noble's claim therefore has to be decided under the provisions of Schedule 4 to the Land Registration Act 2002. That means, as I explained to the parties at the hearing, that adverse possession – even for 12 years – no longer extinguishes the owner's title. Even if Mr Noble can establish ten years' adverse possession, Mr and Mrs Hamer have an absolute right to prevent him from acquiring title unless he can prove one of the three exceptions in paragraph 5 of Schedule 6. Only one of those exceptions is relevant in this case, namely proprietary estoppel.
5. Mr and Mrs Hamer have objected; they say that Mr Noble has not been in adverse possession but that even if he has they object to his acquiring title. Mr Noble says that he has been in adverse possession and that in addition he has an equity arising from a proprietary estoppel, which should be satisfied by title being conferred on him. I am paraphrasing what he said, but Mr Noble produced some notes about estoppel at the hearing and I am satisfied that he understood what he needed to establish an equity by estoppel.
6. Accordingly I have to decide whether Mr Noble has been in adverse possession of the garden plot, as he claims, since 1999 and also whether he has an equity arising by proprietary estoppel.

Adverse possession

7. Mr Noble has been self-employed for many years, and has done work for Mr Hamer for many years. In 1999 Mr Hamer was in the property business, and Mr Noble was thinking of acquiring properties on a buy-to-let basis. In 1999 the owner of 3 Ashfield Road died, and Mr Noble learned from the family that the house was going to be sold. He made an offer for it which was accepted, and although estate agents prepared particulars it was never marketed. Mr Noble instructed solicitors to act for him on the purchase.
8. Mr Noble discussed the purchase of 3 Ashleigh Road with Mr Hamer and they came to an agreement whereby Mr Hamer would buy the house, but Mr Noble would retain the garden by way of commission for passing the purchase to him. The agreement was put into writing and dated 23 April 1999.
9. Mr Nobel and Mr Hamer then went to see Mr Noble's solicitors. Mr Hamer's evidence is that he would normally have used his own solicitors but went along with Mr Noble's suggestion that they use his. What both Mr Noble and Mr Hamer agree is that Mr Hamer was to going buy the house – at the price Mr Noble had agreed to pay for the house with the garden plot – but that Mr Noble would have the garden plot. They both understood that the vendor would sell the property as a whole, and both understood that there would then be a transfer of part so as to split the title.
10. Mr Noble's recollection is that Mr and Mrs Hamer would have the whole property transferred to them and would then transfer the garden plot to him.
11. Mr Hamer's recollection is that Mr Noble would purchase the whole property and then transfer the house to them, retaining the garden.
12. I make no finding as to which of the two parties is right about this. I do not think either Mr Noble or Mr Hamer is lying; it was clear to me that neither of them really understood the conveyancing process. I do not need to make a finding about what instructions were given to the solicitor because two further facts are undisputed. First, the whole property was transferred to Mr and Mrs Hamer on 11 may 1999. Second, both Mr Hamer and Mr Noble believed that from then on Mr Noble owned the garden plot, even though neither of them saw a transfer of part or any report from the solicitors that this had been done. This may seem strange, but there it is, and both had the same understanding.

13. Mr Noble went on to have work done on the garden plot, removing topsoil, putting in a concrete floor, erecting walls and outing on a roof so that the garden plot became a lock-up shed.
14. However, in 2002 Mr Noble applied for planning permission for work he wanted to do or had already done, and he discovered that Mr and Mrs Hamer were the registered proprietors of the garden plot. He wrote to Mr and Mrs Hamer, and so did his solicitors, asking for a transfer of the garden plot into his name.
15. Mr Hamer's evidence is that he then gave Mr Noble permission to use the garden plot for as long as Mr Noble lived at the adjoining house. He says that the permission was never written down, but that they spoke about the situation either in the street or in the alley.
16. Mr Noble's evidence is that they never spoke about the garden plot and that no permission was given.
17. I find Mr Noble's evidence implausible. These two men knew each other quite well, they had been business associates for some years, and both were aware that a deal had been done in 1999. It is implausible that they would have ignored the situation, and implausible that they never spoke. I note that what happened much later was that when Mr Noble's house was repossessed in 2014 Mr Hamer then took back possession of the garden plot, changing the lock on the door into the alleyway, which is consistent with the terms of the permission he claims to have given. I accept Mr Hamer's evidence that permission was given. That brings to an end Mr Noble's claim to have been in adverse possession. He was certainly in possession, but it was not adverse; it was by permission.

Proprietary estoppel

18. I have to consider also Mr Noble's claim to an entitlement by virtue of proprietary estoppel, since in a case where – and only where - an adverse possession claim has to be decided upon this Tribunal has a jurisdiction equivalent to that of the High Court to decide how to satisfy an equity by estoppel.
19. The doctrine of proprietary estoppel is quite complex but can be summarised. To establish an equity Mr Noble must prove first that Mr Hamer made a representation, in words or by silence. Second he must show that he relied upon that representation to his detriment. If he can establish both those things and thereby satisfy me that it would be unconscionable for Mr Hamer to go back on what he said, then I have a discretion to decide how that equity should be satisfied.

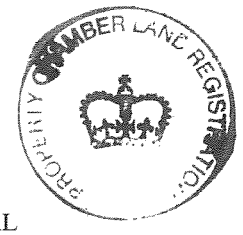
20. Mr Noble cannot show that Mr Hamer made an expression statement to him that he owned the garden plot. Mr Noble said frankly that he "took it as read from the solicitor". In his own words, he was "naïve" or "a bit blasé" to do so, but so he did. He cannot point to any express statement by Mr Hamer that he, Mr Noble, owned the garden plot.
21. However, it is possible for a proprietary estoppel to arise by acquiescence, or silence (*Dann v Spurner* 1802 7 Ves. 231; *Munt v Beasley* [2006] EWCA Civ 370). Did Mr Hamer make a representation to Mr Noble by standing by and letting him do work on the garden plot and making no objection?
22. It is true that Mr Hamer made no objection to Mr Noble converting the garden plot into a shed, during the period that they both thought Mr Noble owned the plot. Whether that amounts to a representation by silence is unclear in the absence of more detailed evidence. What is clear is that if it did, Mr Noble was not relying upon it, He was in no doubt in his own mind that he owned the plot. He "took it as read" from the solicitors and relied upon his own conviction that he was the owner.
23. In case I am wrong about that I would add that if I had found that there was a representation by silence and that Mr Noble relied on it to his detriment, by spending money on the plot and doing work on it, I would have decided that that equity was satisfied by the permission given in 2003 or thereabouts. Mr Noble had not paid anything for the garden; he regarded it as his commission for allowing Mr Hamer to buy number 3 Ashfield Road. It seems to me that the use of the garden plot for 15 years, free of charge, is more than ample repayment for the 1999 deal. There was no unconscionability about the withdrawal of the permission in the end, and no further award of a proprietary right or of compensation was required to satisfy the equity.

Conclusion

24. Accordingly Mr Noble's claim fails and I shall direct the registrar to cancel his application for registration of title by adverse possession. Mt Hamer told me at the hearing on 5 July that he has no claim for costs, and therefore this matter is at an end.

Dated this 7 July 2017

Elizabeth Cooke



BY ORDER OF THE TRIBUNAL