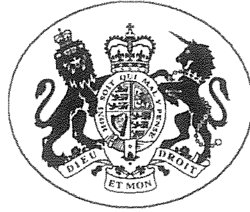


[2019] UKFTT 0251 (PC)

REF/2016/1084

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Anthony John Dodd

APPLICANT

and

Meres and Moses Housing Association

RESPONDENT

Property Address: 1 and 2 Springhill, Alkington, Whitchurch, SY13 3NJ
Title Number: SL189572

ORDER

IT IS ORDERED as follows:

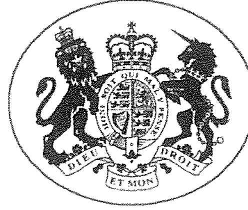
The Chief Land Registrar is to cancel

(i) the Applicant's application dated 21 April 2016 for alteration of the register and
(ii) the Applicant's application of 3 February 2016 for registration of title by adverse possession.

Dated this 15 March 2019

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL



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DECISION

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1. The Applicant, Mr Anthony Dodd, has applied to HM Land Registry for alteration of the title to 1 Springhill, Alkington by the removal of land ("the disputed land") to which he says he acquired title by adverse possession prior to 2003. He has also applied for registration as proprietor of the disputed land, by virtue of his adverse possession.
2. The Respondent is a social landlord and was registered as proprietor of 1 Springhill on its first registration in 2008. It has objected to both applications and the dispute has been referred to this Tribunal pursuant to section 73(7) of the Land Registration Act 2003.

3. The applications were made in early 2016 and referred to the Tribunal pursuant to section 73(7) of the Land Registration Act 2002. The Tribunal proceedings have been lengthy, as a result of the Applicant's failure to comply with the Tribunal's directions.
4. The matter was listed for hearing in Birmingham on 13-14 March 2019.
5. The Applicant attended the hearing and presented his own case, with some assistance from Ms Allison Hopwood-Evans. The Respondent was represented by Mr Andrew Vinson of counsel.
6. I have directed the registrar to cancel the Applicant's two applications, for the reasons given in the paragraphs that follow. I set out first the procedural history of this matter because it is relevant to my assessment of the Applicant's evidence. I then comment briefly on the law, and go through the Applicant's case and explain why I am not able to accept that he has been in adverse possession of the disputed land.

The procedural history

7. The Applicant's applications were referred to the Tribunal in December 2016. A number of orders have been made in the course of these proceedings.
8. On 19 December 2017 Judge Hargreaves made an order:
    i. Setting out by way of reminder to the Applicant the Respondent's address for service, and directing that correspondence to the Respondent is to be sent to that address only.
    ii. That all correspondence to the Applicant was to be addressed to him, and none to Allison Hopwood-Evans and that the email arb@vdella.co.uk was not to be used.
    iii. That unless the Applicant provided a different address for service, correspondence was to be sent to him at The Lower Garden, 1 Springhill, Alkington, WhitchurchSY13 3NJ.
9. The reason given for the directions as to the Applicant's address for service was that his instructions to the Tribunal had been contradictory and confusing. It was noted that the Applicant had had difficulties with postal deliveries to the disputed land, and it was pointed out that it was for him to arrange a different address if necessary.
10. On 6 February 2018 the Tribunal made an order directing the Applicant to file a reply to the Respondent's Statement of Case.
11. A case management conference was held on 17 August 2018 at Alfred Place in London. The Applicant did not attend. Judge Bruce ordered that unless the Applicant served a

Reply to the Respondent's Statement of Case (dated 19 October 2017) by 10 September 2018 the Applicant's case "will be struck out".

12. In his reasons Judge Bruce noted that the Applicant claimed not to have received the Respondent's Statement of Case and said that the Respondent had taken all reasonable steps to serve it. If the Applicant still claimed not to have received it he was to contact the Respondent's solicitors immediately.
13. After that hearing it appears that the Tribunal was contacted by Ms Hopwood-Evans. On 24 September 2018 Judge Hewitt made an order giving the Applicant until 9 October 2018 to file his Reply, on the basis that the order of 17 August had not been emailed to the Applicant. He directed that his order be posted to the Applicant and also emailed to Ms Hopwood-Evans. Judge Hewitt cannot have been aware of the Tribunal's order of 19 December 2017, which meant that despite the absence of email service the order had been served correctly. The Applicant's Statement of Case should at that point have been struck out as a consequence of the "will" unless order.
14. On 12 October 2018 Judge Thorowgood made an order in which he noted that the Tribunal had received numerous emails "from various persons written purportedly on behalf of the Applicant" and that "the Applicant admits that he received a copy of the Respondent's Statement of Case on 9 October 2018". Judge Thorowgood's order extended the time for service of a reply yet further to 4 November 2018 and stating that unless he did so his case "will be struck out".
15. The judge went on to say:

> "The Applicant has been conducting this case in an abusive manner as the various orders already made by the Tribunal ... and the latest slew of correspondence from him and his representatives makes clear. The Applicant's ill-health is not an excuse for this. If he is unable to manage this litigation himself he must either make arrangements for a solicitor or some appropriate person to do so on his behalf or withdraw his application."

16. The Applicant served a reply on 29 October 2018.
17. On 16 November 2018 the Tribunal sent to the parties its standard order requiring disclosure, exchange of witness statements and forms LRHRG indicating the parties' arrangements and dates to avoid for the hearing, by 30 November 2018.
18. On 30 November 2018 Judge Rhys made an order extending that time to 7 December 2018.

19. No form LRHRG was received from the Applicant although his daughter Hayley Dodd sent in a certificate of his unfitness for work until 1 February 2019. The hearing was listed for 13-14 March 2019 and a notice of hearing sent to the parties on 23 January 2019. The notice to the Applicant was sent by post in accordance with the Tribunal's order of 19 December 2017.
20. On 2 February 2019 a further certificate was sent in on the Applicant's behalf indicating that he was unfit for work until 14 February. The certificate provided was a pro forma, signed presumably by a doctor but with no reference to the Tribunal hearing. On 12 February the Tribunal wrote to the Applicant asking him to confirm that he was going to be able to attend the hearing.
21. There followed numerous emails from both Ms Dodd and Ms Hopwood-Evans to the Tribunal enclosing further copies of certificates, including one indicating that he would benefit from a phased return to work covering the period 14 February to 28 March 2019. On 4 March 2019 the Tribunal replied to the effect that if he could produce a letter from his doctor explaining why he could not attend the hearing the judge would be prepared to consider an application for an adjournment. On 11 March Mr Hopwood-Evans provided a print-out of medical records, and further copies of the certificates of unfitness for work.
22. I accept that the Applicant has been unwell and has had eye surgery. I note that his ill-health has caused difficulties for him earlier in the proceedings. But in the light of his conduct in this matter so far I concluded that the reason why he had not provided medical evidence that he could not attend the hearing was that such evidence was not available and that he was in fact fit to attend. I therefore refused the adjournment on 11th March.
23. As matters turned out The Applicant attended the hearing. He was dressed for work in high-vis gear and confirmed that he had been delivering materials to Whitchurch. He presented his own case, was cross-examined, and took me through some of the contents of the bundle. He had some assistance from Ms Allison Hopwood-Evans, but was well able to cope with the hearing.
24. In responding to the Tribunal's letter of 11 March 2019 refusing an adjournment Ms Hopwood-Evans said that the Applicant had not had notice of the hearing. The Applicant repeated this at the hearing. I took the view that the notice had been sent to him correctly at the postal address that he had provided. If that is not an effective address

for him, it has been made clear to him that it is his responsibility to provide an address at which he can receive letters. I saw no reason therefore to adjourn the hearing.

25. At the hearing the Applicant produced a number of further witness statements, which he said had been served on the Respondent's solicitors the previous day, made by witnesses who did not attend with him. I refused to admit those statements in view of their late service.

The law

26. The law that I have to apply is not in dispute; in order to obtain title by adverse possession the Applicant must show 12 years' adverse possession prior to 2003, and adverse possession constitutes both factual possession and the intention to possess the land to the exclusion of all others.

27. The law is a little more complicated than usual, however, because for most of the time that the Applicant has been active on the disputed land it has been tenanted. He seeks to establish adverse possession against the freeholder. I say more about that when I consider specific time periods below.

The Applicant's case

28. I turn now to the substance of the Applicant's applications.

29. Numbers 1 and 2 Springhill are a pair of semi-detached houses surrounded by fields on three sides. Facing the pair from the road, number 1 is on the left, and it has a drive running down the left side of the house. The back garden is in two halves, one nearer the house and one further away, separated by a hedge. The Applicant claims to have acquired title by adverse possession to the left hand side of the drive and to the lower garden (i.e. the section behind the hedge).

The evidence given by The Applicant

30. The Applicant has given three different versions of his evidence.

31. The Applicant first set out his evidence in the Statement of Truth he sent to HM Land Registry with his application. It was dated 7 January 2016. It says:

> "2. I initially took possession of the land included within this claim for adverse possession in or around 1987 when I first moved in with Alison Powell nee Clarke. Alison Powell took my name of Dodd by deed poll sometime before our marriage in April 1992 following the birth of our daughter Hayley in 1989.
>
> 3. The tenancy agreement for the property has always been in the sole name of my wife, Alison Dodd.

> 4. I lived in the property itself with the permission of Alison. However, I possessed the land outlined in blue on the attached plan ... without the owner's consent ... and without the consent of the tenant, my wife, Alison."

32. The statement goes on to explain that he ran a number of businesses from the disputed land. He worked as an HGV driver and tree surgeon. He moved the garage from the centre of the drive to the side, and he resurfaced the drive and widened it. He did not fence off his side of the driveway because the occupants of number 1 understood that it was for the sole use of his business. Alison would park elsewhere, not on the drive. In 1987 he removed the hedge at the bottom of the drive and put in a gate, to make an enclosed space for vehicles beside the lower garden. He kept a series of HGVs on the drive, and put a store shed on it in 2000. Photographs show the separate postbox for his post on the left of the gate at the roadside, various vehicles on the drive and a portacabin. He has provided copy correspondence which shows that 1 Springhill was his business address. There was a gate on the right hand end of the hedge that separated off the lower garden, locked with a combination lock. The gate at the bottom of the drive was also locked and he had the only key.
33. There is no mention in that statement of any activity before he moved in in 1987.
34. The statement explains that in 2015 Mrs Dodd moved out and terminated her tenancy. He arrived home on 14 July 2015 to find the house locked and he was unable to enter because the key was not hanging in the garage where it was usually kept. He asked for the tenancy to be assigned to him but the Respondent refused. At paragraph 15 he says:

    > "... therefore I was left homeless and moved into the caravan which I kept on the lower garden."

35. That is the only mention of a caravan in that statement.
36. I pause to comment that his case on the basis of his first statement had no prospect of success because he made it clear that his possession commenced when 1 Springhill was already let to Mrs Dodd (then Ms Powell). He therefore was not in adverse possession against the freeholder, in accordance with the authority of *Fairweather v St Marylebone Properties Ltd* [1963] AC 510.
37. The first point at which the Applicant could have been in adverse possession against the freeholder was when the tenancy was surrendered on 14 July 2015. Accordingly on the basis of his first statement the Applicant's claim must have failed.

38. However, the Applicant made a further statement of truth dated 30 March 2016 – again, therefore, before the reference to this Tribunal - in which he presents his second version of events.
39. In his second statement the Applicant explains that his adverse possession in fact began much earlier. He says that he had not realised he would need to go back before 1987, when he started occupation for business purposes, but that in fact he was in possession of the disputed land for his personal use from 1971 to 1987. During that period number 1 Springhill was let to Mr and Mrs Betteley. His grandfather was the tenant of number 2, and then his uncle after his grandfather died in 1979. At paragraph 15 he says "I also lodged at 2 Springhill between spring 1971 and 1987 as I left home when my parents moved from Foxes Land Ash into Edgerley Road in 1971."
40. I can summarise the Applicant's evidence of his activities between 1971 and 1987 by saying that he kept chickens and sometimes other animals in the lower garden, fenced off the lower garden to keep the chickens in, sold birds and eggs from there, parked on the drive, and had a shed on the drive for storage. He visited the lower garden at least twice a day to attend to his livestock.
41. He says that Mrs Betteley left 1 Springhill in 1986 to go and live elsewhere. After she left, representatives of the council attended "on quite a few occasions" to inspect the house, sweep the chimney, repaint it and lay new carpets. They also checked the garage for asbestos, and left some wire there which he tripped over.
42. The second statement also says that the Applicant controlled access to the septic tank which the two houses shared, and which had to be emptied from 1 Springhill because there was no vehicular access to 2 Springhill. He says that council representatives needed his permission, and his key to the lower garden, to get access to the tank.
43. The statement says that the Applicant continued in occupation of the disputed land until he moved in with Mrs Dodds in spring 1987.
44. The Applicant's Statement of Case in the Tribunal proceedings refers to both Statements of Truth. It adds nothing to what the Applicant says in those Statements about the period from 1971 to the end of Mrs Dodd's tenancy; it recounts events in the last three or for years, which are not relevant to what I have to decide.
45. At the hearing the Applicant gave a third version of his evidence. He says that he did not live at number 2 Springhill from 1971 to 1987. He was a lodger there and stayed now and then – the odd night, some weekends. Sometimes he stayed at his brother. Sometimes he went back to his parents' address, although 1971 marked the time when

he stayed there less frequently. He says that in 1987 he did not move into the house with Alison. He says that they never got on; he always lived in the caravan in the lower garden. He only married her because she was pregnant.

46. I note that Mr and Mrs Dodd married in 1992, and that their daughter was born in 1989.

My conclusions on the Applicant's evidence

47. I regard the Applicant as a wholly unreliable witness. His evidence has changed twice. It is implausible. What he said at the hearing contradicts what he said earlier and was in any event manifestly false.

48. I can assess his evidence in terms of the different periods of time to which it relates.

49. First, the period from 1971 to the end of Mrs Betteley's tenancy in 1986. The activities the Applicant describes during the period from 1971 to 1987 are too trivial to amount to factual possession or to indicate an intention to possess.

50. Looking first at the drive, all he did was park in front of the garage (which at that stage was in the middle of the drive so that it was not possible to drive all the way to the back of the garden), and used it for storage. That falls far short of physical possession of the whole of half of the driveway. Nor is there any evidence of intention on the Applicant's part to take possession of any part of the drive.

51. Second, in the lower garden he kept chickens and other animals, and put up some fencing to keep them in. It is well-established that fencing put up to keep animals in may not amount to adverse possession (*Basildon DC v* Charge [1996] CLY 4929). An aerial photograph taken in 1988, of which the Applicant showed me the original and several copies, shows the lower garden open to access from the house side of the hedge (if there is a gate there it is open). From 1971 to 1986 there was no gate at the bottom of the drive, and the Applicant said at the hearing that there was a gap in the hedge on the drive side of the garden so that the lower garden was accessible. On the basis of that evidence, and of the 1988 photograph, and of the unreliability of the Applicant's evidence overall, I find that he did not control access to the lower garden by means of locked gates at any time during Mr and Mrs Betteley's occupation of 1 Springhill, and that they were not excluded from any part of their tenanted property. I do not believe, either, that the Applicant controlled access to the septic tank.

52. At the hearing Mr Vinson asked the Applicant whether it might be the case that his grandfather had asked the Betteleys' permission for him to use the bottom of the garden for his chickens, and to park on the drive. The Applicant said yes, that was probably what happened. His grandfather got on well with his neighbours and he, or his uncle,

probably asked if his use of the garden and drive was alright. I find as a fact on the balance of probabilities, therefore, that during the period from 1971 to 1986 the Applicant had permission for everything he did on the disputed land.

53. Accordingly the Applicant was not in adverse possession of any of the disputed land before the end of Mrs Betteley's tenancy in 1986.

54. Had he been in adverse possession as against the Betteleys that would not avail him against the freeholder, unless he remained in adverse possession at the end of the tenancy, at which point the clock would start to run.

55. That brings us to the second and crucial period from Mrs Betteley's departure in summer or autumn 1986 to Mrs Dodd's arrival and the start of her tenancy in April 1987. I accept that the Applicant continued, during that period, doing everything he had been doing on the disputed land prior to Mrs Betteley's departure. But I have already found that those activities did not amount to adverse possession. And during the period between tenancies the Applicant has said that representatives of the council (who then owned the freehold) visited to maintain the property. There was clearly no bar to their access to the land, including the garage on the drive. The Applicant was not in possession of the disputed land, and the freeholder came and went without reference to him.

56. Nor is there any basis on which I could find that during this period the Applicant had the intention to possess the disputed land. Until that point he had been present with permission. He carried on doing what he had done before. He says that he intended to possess the land, but it is well-established that the uncorroborated evidence of an adverse possessor cannot be a basis for a finding of intention. No-one looking at the land would say that anyone was in exclusive possession of it, let alone that that person had the intention to exclude all the world including the freeholder. The Applicant's assertion that he did can take things no further.

57. Accordingly the Applicant was never in adverse possession of the disputed land as against the freeholder, and that is the end of the matter.

58. For completeness I add that I accept the Applicant's evidence in his first witness statement that he moved into 1 Springhill with Mrs Dodd's permission (paragraph 4 of his statement, quoted above at my paragraph 31) and lived there with her. I take that to mean that he moved into the house with her; there was no suggestion at any time before the hearing that that was not what he meant.

59. As Mr Vinson points out, if by "moved in with her permission" the Applicant means that he moved only into the caravan, then it is clear that he was on the disputed and with

her permission and there, too, is an end of the matter. I accept that the Applicant kept a caravan on the disputed land from time to time (there is a photograph of one in the bundle), and that he moved into a caravan in 2015 as he says in his second Statement.

60. Finally, and again for completeness, I add that I do not accept that the Applicant occupied the disputed land without permission from Mrs Dodd, nor that he excluded her and the children from it. That is wholly implausible. They were a married couple living together. He was present with her permission. When she applied to purchase the property under the right to buy in 2001 she stated that the work done on the drive and in the garden had been done by her, so she clearly regarded his work on the disputed land as done for her and with her consent. I do not believe that the Applicant was in possession adverse to his wife. I accept that she may never have given him express permission, any more than she gave him express permission to enter any other part of the property. The two of them lived in the house as a couple and he was clearly present at her invitation and with her permission, even if unspoken.

Conclusion

61. It may be that the Applicant is currently in adverse possession of some of the disputed land, since he has been living in a caravan on the lower garden since Mrs Dodd moved out in 2015. He has not been in adverse possession at any point before then, and therefore his two applications to HM Land Registry are to be cancelled.

62. At the close of the hearing on 13th March 2019 I explained that I would provide the parties with a written decision, and asked the Applicant to provide a postal address for the Tribunal's use. He asked for post to be sent to

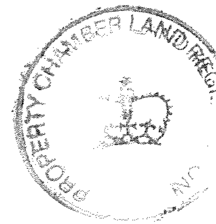
    The Pumphouse
    Springhill
    Alkington
    Shropshire
    SY13 3NJ.

63. He explained that this is land to the side and back of 1 Springhill, which he says is his. Mr Vinson expressed concern at this, pointing out that trespass proceedings have been taken against the Applicant in respect of The Pumphouse. The Applicant said that that is not the case and that post to that address would reach him safely. That being the case I direct that all correspondence shall be addressed to him there. I have not seen any authorisation from the Applicant for Ms Hopwood-Evans to be his representative; the Tribunal's order of 19 December 2017 stands and correspondence will not be addressed

to her. Her practice of deluging the tribunal with emails has been unhelpful to both parties, and the Tribunal will not now accept any authorisation from the Applicant to act as his representative.

64. In this Tribunal costs follow the event and I am minded to order the Applicant to pay the Respondent's costs. The Respondent has provided a schedule of costs. If the Applicant wishes to contest liability for costs, or to challenge the amount claimed, he is to do so within 28 days of the date of this decision. The Respondent may then respond within a further 21 days. I will then make a decision about liability and, if I make an order for costs, as to whether there should be summary or detailed assessment.

Dated this 15 March 2019



Elizabeth Cooke

BY ORDER OF THE TRIBUNAL