

Smile to file

3-3-2002



1 IN CHAMBERS

2
3 IN THE GRAND COURT OF THE CAYMAN ISLANDS

4
5 CAUSE NO:

6
7
8 BETWEEN: JUNE SMITH
9 (As administratrix of the Estate of Alvey Smith (deceased))

10
11 PLAINTIFF

12
13 AND: ELLERY SMITH
14 (As Administrator of the Estate of Samuel Smith Jr. (deceased))

15
16
17 DEFENDANT

18
19 **Appearances:**

20 Mr. Peter Broadhurst of Broadhurst & DaCosta for the plaintiff
21 Mr. William Helfretch of Boxalls for the defendant.

22
23
24 **Before Chief Justice Anthony Smellie**

25
26
27 **DECISION**

28
29 The plaintiff is the first administrator of the estate of Alvey Smith Jr. who died on the
30 28th February 1999.

31 Alvey Smith Jr. was a son of Alvey Smith Sr. and a grandson of Samuel and Iolia Smith,
32 all deceased. Samuel Smith, under whose estate certain lands (including the land in
33 dispute) devolved, died intestate in 1927.

34 The defendant Ellery Smith, is the third administrator of the estate of Samuel Smith Jr.
35 (deceased), the eldest son of Samuel and Iolia Smith. Samuel Smith Jr. was brother to
36 Alvey Smith Sr. The defendant succeeded as the third administrator of the estate of
37 Samuel Smith Jr.; Charles and James Smith, in turn.

1 As administrators of their respective estates, the present plaintiff and defendant are
2 therefore pursuing competing claims to what was, essentially, "family land".
3 Mr. Helfretch brings this application on behalf of the defendant to strike out the
4 plaintiff's action on the grounds of inordinate and inexcusable delay and want of
5 prosecution.

6 As he submits though, and as I am for present purposes persuaded - this being an action
7 for the enforcement of an equitable claim to land - the plea in bar upon which he really
8 relies is the equitable doctrine of laches, as no statutory limitation period applies to the
9 action. The basic principle is that a claim in equity will not be subject to any statutory
10 limitation period where the plaintiff claiming can show a trust as existing because he has
11 paid all that was due in respect of the property and that the defendant is excluded from all
12 benefit: Halsburys 4th Edition (reissue) volume 28 paragraphs 806 and 921 and The
13 Limitation Law 1991, sections 24 and 27. In the prayer to the Statement of Claim filed
14 on 21st January 1997, the plaintiff seeks in effect a declaration that Alvey Smith Jr. was
15 the equitable owner of the land in dispute (George Town Central, Block 14 BG, Parcel
16 80) and consequential orders rectifying the proprietorship section of the Land Register.
17 The land is registered by way of provisional title in the name of the defendant (as
18 administrator of the estate of Samuel Smith Jr.).

19 While there is a history, which suggests a common law root of title going back to the
20 original proprietor Samuel Smith, who died interstate in 1927 and who was the grand-
21 father of both the plaintiff and defendant; the plaintiff claims to have bought the land and
22 obtained a quitclaim from the administrator (of the defendant estate) who was then James

1 Smith, in 1970. This is the basis of the equitable claim and will be more fully described
2 below.

3 Alvey Jr., it is common ground, had also been continually in actual possession of the land
4 since at least 1958 when he built his house on it. At that time Alvey Smith Jr. relied upon
5 a Deed of Gift of the land which is also more fully explained below.

6 An obstacle the plaintiff faces is that the equitable nature of his claim and actual
7 possession notwithstanding, he had taken no steps prior to this action, to secure that that
8 claim became clothed in legal title. This was notwithstanding the cadastral survey and
9 legal registration process which was undertaken for the entire country in the 1970s.

10 This is however, not an insuperable obstacle. Where a plaintiff has both an equitable title
11 and actual possession of the land, his prolonged failure to get in the legal title will not
12 normally be treated as laches barring his claim: Joyce v Joyce [1978] 1 W.L.R. 1170 at
13 1174.

14 As already noted, in contrast to the plaintiff's equitable claim, the defendant has the
15 registered legal proprietorship with provisional title to the land in dispute.

16 His title has been registered only provisionally because at the time of claiming under the
17 cadastral process in 1974, he presented no documentary proof. Since then, on 16th
18 February 1988, the plaintiff succeeded in having placed a restriction on the register.

19 The defendant argues that at least since 1988 when the restriction was placed, the
20 plaintiff was obliged to have the matter resolved by a declaration of the Court. No steps
21 were however, taken to do so until January 1996 when this action, as originally filed by
22 Originating Summons, was brought.

1 Against that background, the defendant's most telling ground of complaint is that the
2 plaintiff Alvey Smith Jr. has since died on the 28th February 1999 and the matter can
3 therefore no longer be tried without prejudice to his case.

4 Up until the death of Alvey Jr., 3 years had passed since the defendant issued these
5 proceedings and a period of 20 months immediately preceding when no step at all in the
6 action was taken.

7 Mr. Helfretch also emphasized the fact-sensitive nature of the case: The plaintiff's claim
8 is largely based upon the assertion that he had paid for the land and had obtained the
9 quitclaim in return. This is notwithstanding that prior to then, for some 30 years, Alvey
10 Smith Jr. had been in actual possession and had earlier claimed to have obtained through
11 his father Alvey Smith, a conveyance of the land by the Deed of Gift. This Deed of Gift
12 was issued ostensibly on behalf of Samuel Smith's estate (his grandfather's) to his
13 father, by a sister of his father's and daughter of Samuel Smith.

14 It is said that as she was not the first child of Samuel Smith at a time when the rules of
15 succession followed primogeniture, that Samuel Smith Jr. as the first born son, had
16 entirely succeeded to title and that hers had failed. Moreover, that her title was rejected
17 in a decision by this Court after trial of that issue. This was in an order of Court which
18 cannot now be located from the records of the Court and in which the Court is said to
19 have also ordered that Alvey Jr. and a sister of his (Coreen - who had been similarly in
20 possession of another parcel from their grandfather's estate), must pay the estate of
21 Samuel Jr. (as the real successor in title) for their parcels of land.

22 The plaintiff claims that Alvey Jr.made his payments as ordered.

1 It is said that Coreen also paid and obtained a quitclaim backed by a receipt which
2 resulted in legal title being registered to her in the cadastral process, in respect of the land
3 she bought. Payments were made to Charles who was the administrator of the estate of
4 Samuel Jr. and later (after Charles died) to James.

5 Now that Alvey Smith Jr. has died, Mr. Helfretch says the defendant will be irredeemably
6 prejudiced in not being able to cross-examine him about the factual circumstances of his
7 alleged payment for the land said to have resulted in the issuance to him of the quitclaim
8 by James in 1970.

9 This being an equitable claim and therefore subject to the bar of laches, Mr. Helfretch
10 says I should also be concerned with whether it will be possible for the Court to do
11 justice between the parties.

12 Mr. Broadhurst, on the other hand, points to the fact that the sister Coreen is still alive;
13 well and able to testify about the relevant factual circumstances: Like herself, she will say
14 Alvey Jr. had obtained the quitclaim having paid for the land. That she was present when
15 he made the last payment and was privy to the circumstances under which James issued
16 the quitclaim, which was, moreover, later registered under the Public Records Law in
17 favour of Alvey Jr.

18 While fraud has not been specifically pleaded, it is clear that when the defendant Ellery
19 (in his capacity then and now as administrator) moved under the cadastral process to
20 obtain provisional title in 1970, he was aware of the fact that Alvey Smith Jr. was, and
21 had for many years been, in possession and had built a house on the land. He must also
22 have been aware of the quitclaim – or so it is to be urged to be inferred - which had been
23 issued by his predecessor in title, James, to Alvey Smith Jr.

1 Upon this application I am ultimately required to decide what is just.

2 This is notwithstanding that I can be guided by the common law rules which apply upon
3 an application of this kind and as developed in Allen v Mc Alpine & Sons [1968] 1. All.
4 ER. 543; Birkett v James [1977] 2 All. ER. 801 and cases decided since then; including
5 Williams v Bob Soto's Diving 1992 - 93 CILR 318, in this Court. While on the facts
6 there may be a prima facie showing of unreasonable delay, I do not conclude , as is the
7 test, that in all the circumstances the consequences of the delay must render the grant of
8 relief to the plaintiff unjust. See for example Verrall v Great Yarmouth Borough Council
9 [1981] Q.B. 202 at 205.

10 In deciding what is just, the conduct of the defendant when he obtained provisional title is
11 a factor that also weighs heavily against the defendant's application to strike out the
12 action.

13 While those facts too remain to be tried, it appears he failed to disclose what he knew of
14 the plaintiff's claim.

15 While it is true that the process under the Land Adjudication Law which followed
16 cadastral and registration under the Registered Land Law were intended to bring certainty
17 and finality to the registration of titles to land, those Laws should not be construed in
18 such a way as to condone a fraud upon the adjudication process itself and so provisional
19 (or even absolute) title so obtained would be open to review and the register subject to
20 rectification and no statutory limitation period would apply. See Ebanks v Clarke 1992-
21 93 CILR 33.

22 As a defence to the bar of laches (assuming that the burden is on the plaintiff to show that
23 the action should not be barred) it appears that she may not need to show that the

1 defendant's conduct amounted to fraud, "any unconscionable failure to reveal is enough".

2 See Tito v Waddell (No. 2) [1977] Ch. 106, at 24 et. seq.

3 The matter is further complicated by the existence of a document which purports to be an
4 agreement dated 14th June 1984 in which Alvey Smith Jr. acknowledged that Ellery
5 Smith was the undisputed legal owner of the land and that whereas he Alvey Jr. "has
6 encroached on the land by building a house thereon without the owner's consent, now
7 agrees that he has no claim to the land and will vacate the land within 20 days of
8 receiving notice" from Ellery requiring him to do so.

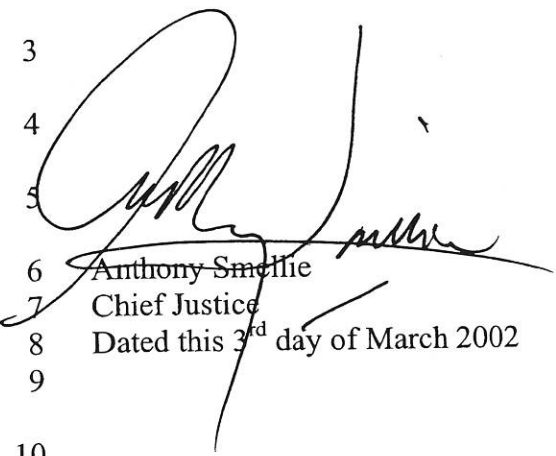
9 Neither Alvey Jr. (in his affidavit sworn while he was alive) nor his witness Dell
10 Seymour, recall signing any such document, due to being drunk at the time when they
11 believe it must have been presented by Ellery. It seems Alvey Jr. was a notorious drunk.
12 Finally, I note that in February 1988, when the restriction was placed on the register,
13 neither side moved to have the matter resolved by the Court until after January 1995,
14 when Ellery attempted to sell the land giving rise to the present action being then
15 instituted by Alvey Jr.

16 I conclude that this action is still amenable to being tried without the prejudice of which
17 Mr. Helfretch complains.

18 The position on both sides is largely to be supported by reference to documents which are
19 registered either under the Public Records Law, The Adjudication Law 1971 or The
20 Registered Land Law and a witness as to the crucial events surrounding the issuance of
21 the quitclaim, Coreen Smith, is still available to testify.

22 I conclude that it would be unjust to strike out the plaintiff's claim and direct instead that
23 the Statement of Claim and Defence and Counterclaim be set down for trial at the earliest

1 available date. Directions must now also be given for the final steps to be taken before
2 trial.

3
4
5
6  Anthony Smellie
7 Chief Justice
8 Dated this 3rd day of March 2002
9



10
11
12