

The Isle of Man Land Registry

Application Number: 200801483

Applicant: Barry Leesley

Objector: Mark Glassey

Title Applied For: Possessory

Premises: Parcel of Land
Junction of Ballamodha Straight and Wigan Lane
Ballamodha
Malew

Decision of G. Andrew Carnson LL.B., M.Sc., Legal Officer (Land), Assistant Chief Registrar at Douglas on 28th October 2009:

Introduction:

1. This is my decision in respect of the application of Mr. Barry Leesley ("the Applicant") for first registration with a possessory title in respect of a parcel of land at the junction of Ballamodha Straight and Wigan Lane, Ballamodha, Malew. The Applicant is represented by Mr. Kevin Goldie, Advocate of Callin Wild. Mr. Mark Glassey ("the Objector") has filed an objection to the application. The Objector is represented by Miss Tracy McQuillan, Advocate of Moroneys.
2. The application was filed in the Land Registry on 8th August 2008 and supported by two Statutory Declarations by the Applicant, the first dated 7th May 1998 (deed reference D1998/02456) and the second dated 7th August 2008 and presented with the application by letter dated 12th August 2008 addressed to the Applicant's Advocates (then known as Quinn Kneale). I sought additional evidence from the Applicant including a supporting Statutory Declaration from an independent party in support of the Applicant's two Statutory Declarations already referred to. I also sought the full name and address of the

Objector as he was referred to in the Statutory Declaration of the Applicant dated 7th August 2008. Before a reply was received to that letter, a letter was received from the Objector's Advocates dated 29th September 2009. In that letter it was stated "*Mr. Glassey visited the Island earlier this summer and subsequently contacted this office as he had been informed that somebody was endeavouring to claim ownership of the land that he had purchased from his father in 1984, copy deed herewith. We attended at the Registry today and it would appear that Quinn Kneale [now Callin Wild] have submitted a Possessory application number 200801483 on behalf of a Mr. Barry Leesley. We believe that Quinn Kneale are aware of the 1984 Deed referred to above and are at a loss as to why they have submitted such an application.*" I have treated this letter as an objection to the Applicant's possessory title application.

3. The 1984 deed referred to and exhibited as part of the Objector's evidence and referred to in the Applicant's evidence is dated 11th December 1984 and made between Arthur Glassey of the one part and the Objector of the other part (deed reference Jan 1985/371). The premises comprised in this deed are slightly more extensive than the premises the subject of this application. The premises comprised in this deed are the subject of a voluntary first registration application made by the Objector and received by the Land Registry on 27th November 2008. This application is presently being held by the Land Registry as it cannot be processed until the outcome of the present application has been decided. This latter application is not before me today.
4. In response to the Objector, the Applicant's Advocates advised me by letter dated 13th November 2008 that "*It is our contention that prior to the deed reference January 1985/371 and subsequent thereto our client had obtained and asserted a good adverse possession claim upon this land.*"

5. I gave Directions on 5th March 2009 that notice of the application be served specifically on two adjoining land owners and also that notice of the application be given by way of advertisements being placed within the three local newspapers circulating in the Island. As a result of these Directions, seven letters of objection to the application were received in the Land Registry from Toni Kennaugh, Alexia Brown, Norman Glassey, Leonard Glassey, A. Glassey and a Mr. Sutton. Each of these seven letters mentioned the name of the Objector or his family in connection with ownership of the land.
6. I inspected the premises in the presence of the Advocates, the Applicant and representatives of the Objector early in August this year.
7. The legal position with regard to possessory title I believe is fairly straight forward. Section 13 of the Land Registration Act 1982 (as amended) ("the Act") states that on first registration of the ownership of a freehold estate or a leasehold, a person may be registered with 'a possessory'. Obviously in this case we are dealing with a freehold estate. Section 13(3) of the Act also states "*It shall not be necessary for the Registrar to approve any title which is proposed to be registered under this Act, but he shall be entitled to withhold registration until he has received such information and documents as he considers necessary to justify him in registering the title applied for.*" I would add that every application received by the Land Registry for possessory title is forwarded to me for my approval.
8. Again, as with the legislative provisions, I believe that the evidential requirements in support of a possessory title are fairly straightforward. Put simply, there are four in number being firstly that the Applicant has factual possession of the land; secondly that the Applicant has the necessary intention to possess the land; thirdly that the Applicant's possession is without the owner's consent; and fourthly that the previous three

requirements have been true of the Applicant and any predecessors through who the Applicant claims for at least 21 years prior to the date of the application. The 21 years is, of course, the limitation period and as Deemster Cain said In the matter of Kenyon 1996-1998 MLR 188 (CHD) "*The limitation period for actions to recover land in the Isle of Man has, since the Customary laws of 1593, always been 21 years. This period was continued by the Statute of Limitations Act 1891 and by the Limitation Act 1984.*" The relevant sections of the 1984 Act are Sections 16 and 17.

9. In support of his case, the Applicant has filed two Statutory Declarations and referred to a third declared by himself. In addition he has also filed Statutory Declarations from David Leesley, his brother; Monica Corkhill, a friend of the Applicant's mother; Margery White, the Applicant's mother; Susan Leesley, the Applicant's wife; and Derek Cannon, a friend of the Applicant. I have also had the opportunity of hearing in person from Barry Leesley, David Leesley, Monica Corkhill, Margery White and Susan Leesley.

10. I am not sure why the Statutory Declaration of 7th May 1998 was sworn but I would consider the principal Statutory Declaration in support of the Applicant's application to be that of 27th February 2009 filed following my letter to the Applicant's Advocate of 12th August 2008 seeking amongst other matters "*A further Declaration from Mr. Leesley to confirm the circumstances in which his family took possession of the premises; the steps taken to secure it and the use the premises have been put to during their period of occupation.*" That Declaration and the verbal evidence that I have heard certainly appear to meet the evidence requirements in support of a possessory title application. His mother, Margery White, supports his Declaration that his family moved into the property known as 'The Willows' in Ballamodha in 1960 and "*For as long as I remember living at The Willows I remember that my family also used and occupied the said land.*" He goes on to indicate the use to which the land was put.

11. In response to the Applicant's claim, the Objector has filed statements from the Objector, Arthur Glassey, the Objector's father; Toni Marie Kennaugh, an owner of neighbouring land; Mark Radcliffe who worked on the land; and Leonard Glassey, the Objector's uncle. I have also had the opportunity of hearing from the Objector and Arthur Glassey, Toni Marie Kennaugh, Mark Radcliffe and Leonard Glassey.

12. What is clear from considering all the documentation is that there has been no evidence presented to me to show where the actual title to the land lies. Mr. Arthur Glassey stated that the land to his knowledge was owned by his grandfather who used it for grazing. He talked of his grandfather giving the land to his father, William Glassey. Mr. Glassey stated that he was born in December 1934. At the age of 21 years, he moved to England. That would have been in and around 1955. He indicates that he met the late Howard Simcock, Advocate, on at least two occasions when he was approximately 25 years old, i.e. 1959/1960, but in his words "*he cannot recall whether any paperwork relative to the matter was signed.*" Subsequently the deed of 11th December 1984 was completed in the circumstances as set out in the supplemental statement of the Objector

of 28th August 2009. It was this deed that was referred to in the Objector's Advocate's letter to the Land Registry of 29th September 2008.

13. Of course, whilst the existence of the deed may or may not have been known of by the Applicant, it has no direct bearing on a possessory title claim. It may or may not help to establish, on paper, where the legal title lies at a given time. However, I am concerned with an application for possessory title. Even if it is accepted that the Objector and Arthur Glassey owned the premises on 11th December 1984, more than 21 years has passed since then and as such the legal title if it existed could be cancelled by a successful possessory title claim in August 2008 in respect of part of the premises referred to in that deed as per Section 17 of the Limitation Act 1984 already referred to.

14. I note that there appears to have been altercations between the Applicant and the Objector and his relatives but these appear to have been in the last two or three years. What the Objector has to show is that the Applicant, and (if applicable) his predecessors through who he claims, has not been in undisputed occupation of the land for at least 21 years.

15. In reaching my decision I should make it clear as already indicated that I am not reaching any decision on the effect of the deed of 11th December 1984 made between Arthur Glassey of the one part and the Objector of the other part. The purpose of this Hearing is to decide whether the Applicant has produced enough evidence to satisfy me on the

balance of probabilities that he and any predecessors has been in factual possession of the land the subject of this application with the necessary intention to possess the land without the owner's consent. The emphasis is on the words 'intention to possess'. I do not believe that back in 1960 there was any intention to possess the land by the Applicant's father. There was clearly a use of one part of the land initially being in the Applicant's own words "*For keeping chickens and storing wood.*" This is confirmed by the Applicant's mother when she stated "*My husband and I gave our twin sons some hens and bantams to look after as pets. We put these poultry on the Wetlands and a hencoop was built on there.*" She went on to talk about the Applicant, his brother and friends regularly playing on the wetlands and hanging up bird feeders and the like on the wetlands in more recent times. The Applicant claims to "*Have used, occupied and enjoyed the said land throughout the whole of the period from 1973 to date.*" [7th May 1998]. I think that the Applicant has used part of the land but I do not accept that the evidence presented to me is sufficient to clearly show an intention to possess.

16. I am also satisfied from the evidence that the Applicant did not have factual possession as was made clear in the case of Powell -v- McFarlane (1979) 38P & CR452 "*Factual possession signifies an appropriate degree of physical control. It must be single and [exclusive] possession...*" In that case Judge Slade went on to say "*Everything must depend on the particular circumstances but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so.*"

17. From the evidence it appears that a number of people have been using parts of the land over the years but I have seen or heard nothing that would satisfy me that any one

person could convince me as to his or her right to be registered with a possessory title in his or her individual name.

18. Accordingly for the reasons given the application is rejected.
19. I am not mindful to make any Order as to costs but Counsel may address me on this point if they wish.
20. In closing, I would add that I believe that my decision fails to resolve a difficult situation in that both the Applicant and the Objector are claiming an interest in the same piece of land. I have not reached any decision with regard to the Objector's application but I believe I may have given some indication as to how I am thinking. It would be better for all concerned if the matter could be resolved in the interest of both parties and possibly with the assistance of Counsel and while both parties on the Island some possible solution to the matter might be investigated.
21. I should add my thanks to both Counsel in assisting me in dealing with this matter.