



LITIGATION AND DISPUTE RESOLUTION

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# Adverse Possession

by **lk-shields**

# Adverse Possession

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Vigilance is necessary to try to avoid claims for adverse possession of land. A recent decision by the Court of Appeal highlights the importance of looking after all legal formalities when a landowner dies.

## What is adverse possession?

Adverse possession relates to possession of land, which is inconsistent with the title of the true owner. In plain English, adverse possession involves taking possession of land when you are not the owner according to the title documents. If certain criteria are satisfied, a person in adverse possession of lands for a period of twelve years or more, can acquire the interest in the lands.

The Court will consider:

1. Whether the person claiming adverse possession was in exclusive possession of the land in question, to an extent sufficient to establish an intention to possess the land, for a continuous period of twelve years; and
2. Whether there have been any acts of possession by the true owner of the land that would break the period of possession contended for.

## Hamilton v ACC Loan Management Ltd and Others [2018] IECA 127

ACC and two bankruptcy receivers appealed a High Court decision in favour of Mr Patrick Hamilton, which found that he was in adverse possession of some twenty-three acres of land in Drumcanon, Co. Monaghan. They lost the appeal.

Patrick Hamilton's father died intestate it appears in 1992 when he was succeeded by his wife and five children. Patrick Hamilton's mother became the personal representative of her deceased husband's estate, which included around 100 acres of land. Although Mrs Hamilton took some steps initially with regard to her late husband's estate, it seems that it was not until 2006 that she transferred the entirety of the deceased's property into her name. This included the lands which later became the subject of the dispute between Patrick Hamilton and ACC.

It appears that before his father's death, Patrick Hamilton and his father had farmed the relevant lands together. And he continued to do so following his father's death. He grazed his cattle on them, he had his own cattle herd number and he claimed numerous agricultural subsidies -- declaring in all of the application forms that he was the owner of the disputed lands.

In October 2006, it seems that Hamilton's mother transferred farmland, including the disputed lands, to another son, Sean Hamilton. The lands were to be used as security by Sean Hamilton in respect of a loan facility with ACC. Patrick Hamilton gave evidence that he knew nothing of the transfer to his brother Sean until 2013, when a "for sale" sign was erected on the disputed lands on behalf of bankruptcy receivers appointed over Sean's estate.

In 2015, Patrick Hamilton issued proceedings against ACC and others, seeking a declaration that he was in adverse possession of the disputed lands and that he was entitled to be registered as owner of those lands.

It appears to have been accepted by the parties in the High Court that the key question to be determined by the Court related to the nature and extent of Patrick Hamilton's possession of the lands and more particularly, whether he excluded his mother from control of the disputed lands and whether he demonstrated his intention to do so. The High Court found in favour of Patrick Hamilton and made a declaration that he was in adverse possession of the lands and that he was entitled to be registered as owner of the disputed lands.

On appeal, ACC submitted that while they accepted that Patrick Hamilton had been in occupation of the disputed lands for a period in excess of twelve years since his father's death, the evidence showed that Mrs Hamilton remained in occupation of the lands and that Patrick Hamilton merely had permission from her to farm the disputed lands. ACC contended that Patrick Hamilton was engaged in a joint operation with his mother whereby he farmed the disputed lands with her consent.

ACC also sought to rely upon the fact that Mrs Hamilton had transferred some land to Patrick Hamilton around 1994. They said that this transfer must be seen as a satisfaction of Patrick Hamilton's entitlement to a share of his father's estate on intestacy, and that thereafter, Patrick Hamilton had no claim to the estate, including the disputed lands. ACC claimed that the transfer in 1994 negated Hamilton's claim to adverse possession. Patrick Hamilton contended that the land was transferred in 1994 so that he could apply for planning permission for a house on the land in his own name.

In his judgment in the Court of Appeal, Mr Justice Peart stated the following:

- That nobody else was in possession of the land with Patrick Hamilton, or shared possession with him and that Patrick Hamilton alone occupied the land.
- That Patrick Hamilton had his cattle on the land and had his own herd number.
- That Patrick Hamilton alone applied for various grants and payments and that he was the only child with an interest in farming.
- That Patrick Hamilton treated the lands as his own lands and did so for the requisite period of twelve years and more.
- That Patrick Hamilton had the necessary intention to possess the lands to the exclusion of all others and that this was not a case where his possession of the land was temporary or sporadic, it was permanent and exclusive.
- That viewed objectively, Patrick Hamilton had the necessary level of physical control over the lands.

Mr Justice Peart then considered whether there was any act of possession, however slight, by Patrick Hamilton's mother during the period of twelve years following her husband's death in 1992 which could be considered to have interrupted Hamilton's otherwise exclusive and single possession of the land, such that there was not continuous possession for the required period.

In particular, Mr Justice Peart considered the question of the transfer of lands to Hamilton in 1994. The Judge found that that transfer of land did not have any relevance to the question as to whether the Patrick Hamilton had demonstrated the necessary animus possidendi (intention to possess) over the disputed lands.

The appeal was dismissed.

### **Comment**

This case demonstrates how important it is to attend to legal formalities upon the death of a landowner to ensure that there is clarity in relation to the ownership of land. Attending to formalities with a degree of speed should minimise the risk of disputes arising at a later date.

**About the Author**