



[2019] UKFTT 0166 (PC)

REF/2018/0100

PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002

BETWEEN

WILTON TRUSTEES (IOM) LIMITED

APPLICANT

and

CELIA JESSICA CAMPBELL

RESPONDENT

Property Address: Land on the east side of Banbury Road, Oxford OX3 6JT

Title Number: ON238527

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

On: 9th and 10th January 2019

DECISION

IT IS ORDERED that the Chief Land Registrar shall give effect to the Applicant's application in Form AP1 dated 18th July 2017

Dated this 8th day of February 2019

Owen Rhys



BY ORDER OF THE TRIBUNAL



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Applicant representation: Mr Patrick Rolfe of Counsel instructed by Prince
Evans Solicitors
Respondent representation: In person

DECISION

Background

1. By a transfer dated 20th December 2002 Sterling Securities Limited (“Sterling”) acquired the freehold title to land on the east side of Banbury Road, Oxford, registered at HM Land Registry under title ON238527 (“the Garden Land”). Sterling was registered as proprietor on 14th January 2003. The Garden Land is contiguous with and exclusively accessible from the south-western boundary of 15 Northmoor Road, Oxford OX2 6UW (“the House”) which was at that time the

family home of the Respondent and her then husband Mr Leo Campbell (“Mr Campbell”). From the date of the acquisition of the Garden Land, it was used as an additional garden area in conjunction with the enjoyment of the House.

2. On 1st July 2004 Sterling changed its name to Wilton Trustees (IOM) Limited (“Wilton”). However, the register was not updated and Sterling remained registered as proprietors of the Property. Sterling was and Wilton currently is the trustee of the Northbridge Trust 02. Mr Campbell is not a beneficiary of the trust, but he is a discretionary object and it is anticipated that an appointment will be made to him in the future. In view of the connection between Mr Campbell and Sterling (subsequently Wilton), Wilton claims that the enjoyment of the Garden Land by Mrs and Mrs Campbell and their family was with the consent of the registered proprietor.
3. In 2005 Mr Campbell began divorce proceedings, in the course of which the parties reached an agreement¹ for financial provision on terms which are recorded in a Consent Order (“the Order”) dated 18th December 2006. The material provisions of the Order are as follows:
 - (1) It was recited that the Respondent had agreed with Mr Campbell and undertaken to the Court that she would upon request allow Mr Campbell and/or his servants or agents reasonable access through the gardens of the House to the Garden Land.
 - (2) It was ordered that Mr Campbell should forthwith transfer all his legal and beneficial interest in the House to the Respondent.
 - (3) It was ordered that the Respondent should forthwith transfer to Mr Campbell all her legal and beneficial interest in a property at Queen’s Gate Mews in London (“the Mews”).
4. Although the parties to the divorce had been represented by Sears Tooth (the Respondent) and Withers (Mr Campbell), they instructed different solicitors to carry out the conveyancing transactions required under the terms of the Order. Mr Campbell instructed Mr Paul Quigley of Blake Laphorn Tarlo Lyons (“BL”),

¹ Subject to the Respondent’s claim that she did not sign the Order, discussed below.

who wrote to the Respondent on 28th February 2017 to introduce himself and to ask for the contact details for her solicitors. In an email to Mr Quigley sent on 23rd March 2007, the Respondent wrote: *“Just received your email, left details with Anne Cowell earlier today. Ratcliffe and Bibby, attention Ian Gardner, 01524 410424. Looking forward to a speedy transfer; have been trying to push this through now since December.”*

5. There was an exchange of correspondence between Mr Quigley and Mr Gardner of Ratcliffe & Bibby (“RB”). On 29th March 2007 Mr Quigley wrote confirming that they had been instructed to act for Mr and Mrs Campbell respectively. Mr Quigley’s letter includes the following passage: *“The land at the rear of 15 Northmoor Road which is owned by North Bridge Trust is to have the benefit of access over 15 Northmoor Road to and from the North Bridge Trust land which will terminate if your client does not occupy 15 Northmoor Road. Similarly your client (and particular the children) are to have a right to use and enjoy the North Bridge Trust land by licence for so long as your client occupies 15 Northmoor Road. When you client no longer occupies 15 Northmoor Road then the Licence in our client’s favour and the Licence in your client’s favour will come to an end. Perhaps you can confirm that you have similar instructions and we will then go about drafting the appropriate documents.”* This produced the following response from Mr Gardner: *“We thank you for your letter of 29th March, and confirm that our understanding of the situation is as set out in your letter..... To progress matters we enclose draft Transfer of title ON1195 [the House], which we trust is the extent of the property being transferred to your Client. We look forward to receiving draft Transfer in relation to 56 Queensgate Mews, together with the draft Licences referred to in your penultimate paragraph.”*
6. There then ensued extensive negotiations with regard to the House, the Mews and the Licences. I shall look at these in more detail below. These negotiations culminated in completion of the various conveyancing transactions on or about 18th July 2007.² The solicitors exchanged executed TR1s in relation to the House

² There is no formal attendance note but sufficient contemporaneous evidence to establish this date.

and the Mews, and they also exchanged Licences relating to the use of and access to the Garden Land. I shall consider these Licences in more detail in due course. Mr Campbell was registered with title to the Mews on 9th August 2007, and the Respondent was registered with title to the House on 15th November 2007. The Respondent has continued to live at the House until very recently, when she vacated it consequent upon a possession order in favour of her mortgagees.

Registration of the Garden Land in the Respondent's name

7. By a form ADV1 dated 2nd September 2015, the Respondent applied to be registered as proprietor of the Garden Land, on the basis of adverse possession, supported by a Statement of Truth (ST1) of the same date. A number of photographs, including pictures of her children playing in the Garden Land, were attached. In this document she asserts a period of adverse possession of 12 years, from 2003 to 2015, and gives particulars of the acts of adverse possession:

- (1) *"Since 2003 I have used the land exclusively as if it were part of my own garden (I live in the adjoining property 15 Northmoor Road, Oxford shown edged blue on the plan.) Nobody else has used the land during the past 12 years."* She then itemises numerous activities which she has carried out on the land, such as rearing chickens, cultivating a vegetable patch and organising games, parties etc for her 4 children and their friends.
- (2) Under the heading *"Enclosure of the land"* she says this: *"The land is enclosed on all sides by a 6ft high wall, the only access being via a gate from my adjoining property 15 Northmoor Road, in the position marked "G" on the plan attached. The gate is not locked, as the only access is via my adjoining property."*
- (3) Under the heading *"Permission to possess"*, she has ticked the box which reads *"[The possession has been] without the consent, licence or permission of anyone at any time"*.
- (4) Under the heading *"Details of any known freehold owner of the land"* she has given the name *"Sterling Securities Limited"*.

(5) Under the heading “Contact with freehold owner” she says this: “I have researched and checked Sterling Securities Limited. I believe an Isle of Man company with that name and number 012743C was dissolved in 1989.”

8. The Land Registry sent notice of the application addressed to Sterling at 66-67 Athol Street, Douglas, Isle of Man. Joy Jones, on behalf of the Wilton Group, responded as follows: “We received the attached documents by post in October, addressed to Sterling Securities Limited, and we don’t believe these documents are for us. The Applicant Celie Jessica Campbell is unknown to us and the company, Sterling Securities Limited with company number 102743C, referred to in the Forms, is not related to Wilton Group or any of its subsidiary companies nor have we acted on their behalf. In addition it should be noted that Sterling Securities Limited with company number 102743C has been dissolved from the records at the Registry with effect from 5 June 1989..... For your information, one of our companies Wilton Trustees (IOM) Limited was incorporated with the name Sterling Securities Limited with registration number 095898C.”
9. In the event, the Respondent was registered with an absolute title to the Garden Land on 3rd September 2015. I observe in passing that one might have expected the Land Registry to have registered the Respondent with a possessory title, which is the usual way of giving effect to a successful ADV1 application. Further, it ought to have been clear that the company Sterling Securities Limited registered with company number 012743C cannot have been the original registered proprietor, since it was dissolved in 1989, some 14 years before Sterling was registered as proprietor of the Garden Land.
10. By an application in Form AP1 dated 18th July 2017, Wilton applied to alter the register to remove the Respondent’s name from the proprietorship register, to be replaced with its name. Evidence has been provided³, in the form of a certified Certificate of Change of Name from the General Registry of the Isle of Man, that Sterling Securities Limited changed its name to Wilton (Trustees (IOM) Limited

³ The evidence is not accepted by the Respondent, a point I consider in the Decision.

on 1st July 2004. It is Wilton's case that the registration of the Respondent was a mistake, and it seeks to alter the register under Schedule 4 of the Land Registration Act 2002 ("the LRA 2002"). In a nutshell, it contends that the Respondent's use of the Garden Land has always been with the express permission of the registered proprietor, Sterling, re-named as Wilton Trustees (IOM) Limited. It also pleads that Mr Campbell has from time to time visited the Garden Land with its consent, thus negating exclusive factual possession. It criticises the Respondent for failing to mention, when applying for title in 2015, her connection with Sterling, or the existence of express licences granted to allow her to occupy the Garden Land in conjunction with the enjoyment of the House. It argues that she has never been in adverse possession of the Garden Land, and that therefore she should never have been registered with a title to it.

11. For her part, the Respondent raises a number of issues in her Amended Statement of Case. She claims that she always believed that Mr Campbell owned the Garden Land and "gave" it to her as a present on her 39th birthday in June 2003. She pleads that there has been no evidence provided that Sterling actually purchased the Garden Land, and refers to its "purported" acquisition. She denies that she ever signed a licence relating to the Garden Land, and denies that her enjoyment of the Garden Land has ever been with Wilton's consent. She denies that Mr Campbell has ever had access to the Garden Land and does not admit that Mr Campbell has visited it on the pleaded occasions. She contends that her use of the Garden Land has always been "as of right", and without consent.

The legal framework.

12. Adverse possession for the purposes of Schedule 6 to the LRA 2002 is defined by reference to section 15 of the Limitation Act 1980, since it is a branch of the law relating to the limitation of actions (see Sch.6 para. 11(1).) Section 15 of the Limitation Act 1980 provides that: "*No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.*" An action to recover land is an action in trespass, against a person who has entered land and remains in possession without the owner's consent. A person who has entered land with consent cannot be in

adverse possession until the consent has been withdrawn. This obvious proposition was summarised thus in Buckinghamshire CC v Moran [1989] EWCA Civ 11: “*Possession is never "adverse" within the meaning of the 1980 Act if it is enjoyed under a lawful title. If, therefore, a person occupies or uses land by licence of the owner with the paper title and his licence has not been duly determined, he cannot be treated as having been in "adverse possession" as against the owner with the paper title.*” Subject to this fundamental point, a person seeking to establish title by adverse possession must prove two things: (a) exclusive factual possession, and (b) an intention to possess. Both these phrases have, fortunately, received considerable judicial exposition, most notably in the first instance case of Powell v McFarlane (1979) 38 P & CR 452 and the decision of the House of Lords in J.A Pye (Oxford) Ltd v Graham [2002] UKHL 30 which adopted much of the reasoning in Powell’s case.

13. Wilton contends that the Respondent’s possession of the Garden Land for the requisite period of 10 years, if proved, was never adverse to the registered proprietor, since she was in possession with its consent. If that is proved, it is then necessary to consider whether Wilton is entitled to require the Land Registry to alter the register, by removing her name as proprietor and re-instating its name. The jurisdiction relied upon is that contained in Schedule 4 para.5(a) to the LRA 2002, namely to correct a mistake on the register. It relies in support of the application on the decision in Baxter v Mannion [2011] EWCA Civ. 1594. This case established the following principle. Where a person has become registered with a title based on adverse possession, on the strength of information supplied to the Land Registry which turns out to be false or simply inaccurate, that constitutes a “*mistake*” for the purposes of Sch.4 para.5(1). If, therefore, Wilton is able to prove that the Respondent was never in adverse possession of the Garden Land, or had not been in adverse possession for the required period of time, it will be entitled to alteration of the register, subject to two further points. Para.6(2) to Schedule 6 provides additional protection to a registered proprietor in possession. If that person (i.e the Respondent) has caused or substantially contributed to the mistake by fraud or lack of proper care – which must be the case here if Wilton establishes the mistake – the only protection is that contained

in para. 6(2)(b). In effect, the Respondent would have to show that it would be just for the alteration not to be made. This point was dealt with briefly in Baxter v Mannion at paras. 41 and 42. In essence Jacob LJ held that it was a matter of “*simple justice*” that the register should be altered, since “*Mr Baxter had made an unjustified attempt to get himself title. Mr Mannion would otherwise lose his property.*” The same reasoning would apply in this case.

14. Finally, even if the mistake is proved, and it is held that the Respondent is not in possession, alteration of the register may be refused if “*exceptional circumstances*” can be shown. This is the effect of para. 6(3) of Schedule 4.

The issues in the reference.

15. Accordingly, the following are the issues that must be resolved:

- (1) Was the Respondent entitled to be registered with title to the Garden Land at the date of her application on 2nd September 2015? This turns primarily on whether she was in possession with Wilton’s consent and is the principal issue in the case.
- (2) If not, whether her registration was a mistake for the purposes of Schedule 4 para.5(a) of the LRA 2002. In view of Baxter v Mannion, there is little scope for dispute on this issue.
- (3) If Sch.4 para.5(a) applies, was the Respondent in possession of the Garden Land at the material date – which Wilton submits is the date of this hearing, and not the date of the application?
- (4) If she is in possession for these purposes, would it be unjust for the alteration not to be made?
- (5) Are there “*exceptional circumstances*” for the purposes of para. 6(3) of Schedule 4?

The Licences

16. Wilton’s case is simple. It says that the Respondent was permitted to enter and use the Garden Land after July 2007 by express permission, and therefore she can never have been in adverse possession after that time. Prior to July 2007 her enjoyment was shared with that of Mr Campbell and was also permissive.

Accordingly, the Respondent has never been in adverse possession of the Garden Land and should never have been registered with title to it. As an alternative, it also contends that Mr Campbell has entered the Garden Land from time to time after July 2007 and therefore her possession cannot have been exclusive.

17. The Respondent denies that she ever executed a counterpart licence. She says that following the Consent Order she had been advised against executing a Licence relating to the Garden Land and had not done so. She relies on expert opinion evidence (referred to below) to the effect that her signature on the document was forged. In her oral evidence she was adamant that she would never have accepted a licence from an “offshore” company, since the garden was used by her children and in any event she considered that she already owned it.
18. To resolve this issue it is necessary to consider in some detail the events following the execution of the Consent Order in December 2006. I should say that the Respondent, in her oral evidence, denied that the signature on this document was hers. The order was negotiated at a time when she was represented by Sears Tooth solicitors, and the Consent Order is counter-signed by her solicitor. I cannot accept her evidence that she did not sign the Consent Order. Not only is it highly improbable that Sears Tooth would have counter-signed a document unless they knew that it had been signed by their client, but negotiations between the parties’ respective solicitors continued between December 2006 and July 2007 in which the detailed elements of the Consent Order were implemented. It is inconceivable that this would have happened if the Respondent had at any stage denied that the Consent Order was not binding on her. I shall therefore proceed on the basis that the Consent Order was signed by and was binding on the Respondent. The solicitors’ file has been recovered and the documents and facts referred to below are derived from a perusal of that file, which was put in evidence before me.
19. The terms of the Consent Order are relevant, as also are the documents that preceded it. I have already referred to her undertaking which is in these terms: *“Upon request to allow the Husband and/or his agents reasonable access through the gardens of the former matrimonial home to his property to the rear of 90 Banbury Road, Oxford.”* In the witness statement made by Mr Campbell in

relation to the ancillary relief proceedings in the divorce, Mr Campbell says this: *“Northbridge Trust 2002. In addition to the above, I am a beneficiary of the Northbridge Trust 2002. As explained in my Form E, the Trust documents do not refer to a schedule of beneficiaries. However, for the purposes of these proceedings, I acknowledge that on the basis that the trustees nominate me I have a beneficial interest in those assets held by the trust, which are Land at Banbury Road. 3 years ago I purchased a strip of land immediately adjacent to the former matrimonial home, and behind 90 Banbury Road. For the purposes of Form E I used the costs price (£137,500).”* The accounts of Northbridge Trust 02 were attached to Mr Campbell’s replies to the Respondent’s request for information. In the Schedule of Assets this entry appears under Assets; *“Plot of land in Banbury Road, Oxford 137,468.”*

20. On 24th April 2007 Mr Quigley of BL (for Mr Campbell) wrote to Mr Gardner of RB (for the Respondent) enclosing draft *“Licence for Access in respect of 15 Northmoor Road in duplicate for approval”* and *“A copy of the title for Sterling Securities Limited”*. He continues: *“My proposal is that you will prepare the Licence for Occupation in respect of the Sterling Land on similar terms.”* On 16th May 2007 Mr Gardner responded thus: *“I do not consider that it is appropriate that the Licence should cease if the land is sold, as we understand that the intention is that our Client, and the children, should be allowed to use the land as a play area and garden whilst they are in occupation, and the Licences should cease only when they leave the property. If your Client does therefore sell the land in the meantime, then it would simply be subject to the Licence, and that would not stop him selling the land to effect the scheme of wealth and tax planning change that has been referred to.”*

21. On 23rd May 2007 Mr Quigley of BL wrote to Mr Gardner. The third and fourth paragraphs of the letter read as follows: *“The Court Order is clear in respect of access to the land owned by Sterling and does not require our client to give a Licence over the Sterling land, but our client is content that your client and the children enjoy by licence the land in Sterling’s ownership. This is different from the position in relation to the access over 15 Northmoor Road which was granted as part of the divorce settlement and is contained in the Court Order. The*

Licences need to reflect this difference. We have therefore redrafted both the licences and enclose the drafts. We have made them much shorter and hopefully clearer. We are not sure if we need a plan but if so it will be from the Land Registry plans. You will see that we have incorporated other terms and our clear instructions are that these are the terms on which the licences are to be granted.

22. On 4th July 2007 Mr Gardner emailed Mr Quigley as follows: *“Further to our telephone conversation I confirm that I have forwarded the Transfer Deeds and the Licences to my Client.”* The copy Licences sent by BL contained an error, however. At this stage all parties were under the mistaken impression that the Property remained registered in the name of Sterling. In fact, it had changed its name to Wilton Trustees (IOM) Limited. Sterling was defined as *“the Grantor”* and the Respondent as *“the Grantee”*. The Garden Land was defined as *“the Grantor’s Land”*. Clause 3 is in these terms: *“The Grantor grants to the Grantee the right to use the Grantor’s Land for the purposes set out in the Schedule hereto only until the happening of the first of the following events”* These events include the Grantee ceasing to occupy the House as her main residence, and the giving to her of three months’ notice in writing. A licence fee of £25 per year was stipulated.
23. On or about 9th July 2007 Mr Campbell drew to the attention of Mr Quigley the fact that the title to the Garden Land was still registered in the name of Stirling, but it had changed its name to Wilton Trustees (IOM) Limited. This caused BL to write to Debbie Hammond at Wilton to ask her to send signed versions of the Licence showing the correct name. On 11th July 2007 Debbie Hammond posted and emailed *“two licences for access duly signed on behalf of the trustees.”* These were emailed to Mr Gardner on 12th July 2007. On the same day Mr Gardner wrote to Mr Quigley stating that *“I would propose forwarding to you £650,025 being the balance due to redeem the Charge [on the House], together with the first annual payment of the Licence fee for the land at the rear of the property.”*
24. On 13th July 2007, RB wrote to BL as follows: *“At this stage we enclose the original Licences signed by Celia Campbell in relation to the property and the land at the rear, together with our cheque for £25, being the fee for the first year’s*

Licence fee.” They also confirmed that they held a signed TR1 in relation to the Mews. Completion took place on 18th July 2007, and on that date BL sent RB counterparts of the TR1s as signed by Mr Campbell, and of the Licences as signed by Wilton. Mr Campbell was registered with title to the Mews in August 2007, and the Respondent with title to the House in November 2007, thus giving effect to the property transfers agreed by the Consent Order.

25. There is correspondence on BL’s file after completion, when Wilton drew attention to the fact that there were minor discrepancies between the form of Licence signed by the Respondent and by Wilton, including the fact that Sterling was named as a party to the Licences sent to and purportedly signed by the Respondent. It was suggested that the Respondent should be asked to re-execute the Licences, but RB had ceased to act for her and in the event nothing further was done. The Licence in relation to the Garden Land, as signed by Wilton, defines it as “*the Grantor*” and the Respondent as “*the Grantee*” and contains the identical words of grant as are contained in the counterpart purportedly signed by the Respondent and to which Sterling is the other named party. The Licence therefore reads as follows: “[*Wilton Trustees (IOM) Limited*] grants to [*the Respondent*] the right to use [*the Garden Land*] for the purposes set out in the Schedule hereto only until the happening of the first of the following events.....”.

26. In conclusion, therefore, two sets of Licences were drafted and signed, one set relating to the use of the Garden Land, and the other relating to access to it. One set was signed by Wilton, and the other set (to which Sterling was the other party) appear to bear the Respondent’s signature, but she alleges that these are forgeries. They are not in identical terms as mentioned above, but are identical in the material respects.

The witness evidence

27. Evidence for the Applicant was given by Mr Julian Harper, a consultant to the Applicant, and by Mr Leo Campbell. They had both made witness statements on which they were cross-examined. The Respondent verified her statements of case and her witness statement dated 10th December 2018, and was cross-examined on them. Much of the Mr Harper’s evidence was based on the documents which had

been produced, essentially drawing the threads together. Mr Campbell's evidence largely consisted of references to the witness statements and Form E which he had submitted in the divorce proceedings, which had in turn led to the Consent Order. In his oral evidence he said that he had actually been present at the House when the Respondent had signed the Mews transfer and Licences. The Respondent vigorously denied this, and repeated that she did not sign the Licences, or the Transfers, or the Consent Order itself. She also said that Mr William Bibby, named as the witness to these documents, had no recollection of signing them, but he himself had not made a statement and there was no direct evidence from him. She said on a number of occasions that she had been advised by a friend, a lawyer with Morgan Cole solicitors, not to sign the Licences and she had not done so. She said that she had been on the point of selling the House in 2015 and had received a number of offers. This encouraged her to buy another house with the aid of a bridging loan secured on the House. However, due (according to her) to the fact that the Garden Land was not owned by her, and had planning potential, the buyer of the House had withdrawn. She then obtained a title to the Garden Land, but by that time the market had turned, and she was unable to sell the House. As a result, she says that on 6th September 2018 the mortgagee executed a possession order on the House. However, she said that she was still able to obtain access to the Garden Land by climbing over a wall from a friend's garden, although the only entrance was through a gate in the wall between the rear garden of the House and the Property. She says that Wilton's claim on the Garden Land had prevented her from selling the House at a reasonable price.

28. The Respondent also relied on a report from Margaret Webb, who describes herself as a forensic document examiner. She was asked to express an opinion about the authenticity of the Respondent's signatures on the counterpart Licences. She was shown three versions of the Respondent's signature as representative control samples. All three signatures were made in August 2018. Her firm conclusion was that the Respondent's signature on the Licence was a simulation.

Conclusions as to adverse possession.

29. Having considered the evidence in this case my conclusions are as follows:

- (1) Between January 2003 and July 2007 the Respondent was not in exclusive factual possession of the Garden Land with the necessary intention to possess. Her use of the Garden Land was enjoyed with the permission of the registered proprietor, Sterling (renamed Wilton after 1st July 2004). The Garden Land was purchased by a trust of which Mr Campbell was the anticipated beneficiary, specifically for the enjoyment by Mr Campbell and his family of the Garden Land as an addition to the amenities of the House, which they occupied as a family until Mr Campbell left in approximately 2005. The basis of the Respondent's enjoyment of the Garden Land did not change even after Mr Campbell had left the House.
- (2) Whether or not Mr Campbell purported to "give" the Garden Land to the Respondent on her 39th birthday, she must have become aware, no later than the receipt of Mr Campbell's Form E particulars in the divorce proceedings, that the title was held by the trustee of the Northbridge Trust 02.
- (3) From July 2007 until 3rd September 2015 (when she was registered as proprietor) the Respondent occupied the Garden Land under the terms of an express Licence granted by Wilton to her, which did not grant her exclusive possession. Until the Licence was terminated by one of the stipulated events, or by three months' notice, she had a right to be in possession of the Garden Land and Wilton had no right to recover possession. Time under the Limitation Act 1980 therefore never started to run.
- (4) It follows that she was not in adverse possession of the Garden Land at any time prior to the application which led to her being registered as proprietor. Accordingly, when the Land Registry gave effect to her application and registered her as proprietor, her registration was a mistake.
- (5) Furthermore, the registered proprietor of the Garden Land had the benefit of an express right of access to it under the terms of the Licence granted by the Respondent to Sterling. This access was used by Mr Campbell to enter the Garden Land on numerous occasions between 2008 and 2014 as

specified in paragraph 14 of his witness statement. I accept his evidence in this regard. The Respondent was not in exclusive factual possession.

(6) In view of the fact that the Respondent no longer lives at the House, a possession order having been made against her, she is not in possession of the Garden Land within the meaning of Sch.4 para 6 to the LRA 2002. The fact that she is able to access the Garden Land by climbing over a wall does not amount to possession.

30. The relevant findings are principally derived from the documents themselves. The course of the negotiations between the parties between the signing of the Consent Order and completion on 18th July 2007 can be followed in great detail from the documents in the solicitors' file. It can be seen that it was always envisaged by the parties and their advisors that the Respondent's use and enjoyment of the Garden Land would be on the terms of a licence to be granted by the registered proprietor - thought originally to be Sterling. It may be true that the Respondent's was advised by a friend not to sign the Licence, although it is difficult to see why this advice should have been given. At one point in the negotiations it appears that the Respondent did not want to take a Licence of the Garden Land, but would simply rely on Mr Campbell's goodwill. However, there is ample material in the file – see for example the exchange of emails between Mr Gardner and Mr Quigley on 4th July 2007 [306] – that demonstrates that prior to completion she had changed her mind and was asking for a Licence of the Garden Land. There is no doubt that Wilton executed the Licences and that these were sent to the Respondent's solicitors around the completion date. There is evidence in the files that Mr Gardner was in direct contact with his client, and it is simply incredible to suppose that the Respondent was not aware of the Licence arrangement and did not see the Wilton Licences. Whether or not she herself signed the counterpart Licences – an issue which I discuss in the next paragraph – it is undeniable that Wilton gave her express permission to use the Garden Land, which negates any suggestion of adverse possession.

31. In my judgment, however, the Respondent did sign the counterpart Licences, and I find this as a fact. I reject her evidence that she did not sign these documents. It is inconceivable that her solicitor Mr Gardner could have received the signed

documents from someone other than her, and forwarded them to BL unless he was satisfied that his client had signed them. Furthermore, the signatures on the Consent Order, and the two counterpart TR1s – relating to the House and the Mews – contain signatures which appear identical to the signatures on the Licences. This fact explains why she was at such pains to disown these other documents. I have already explained why I consider that she signed the Consent Order. It is inconceivable that the TR1s would have been forged. She was contractually bound by the Consent Order to sign the TR1 forms, and she and Mr Campbell were entered on the register of the House and the Mews respectively on the basis of these transfers. Forgery makes absolutely no sense in this context.

32. I also reject the evidence of Margaret Webb insofar as it casts doubt on the signature on the counterpart Licence. She was instructed to compare a signature on a document dated 2007, with three signatures created in August 2018, well after the dispute had arisen. I cannot understand how Ms Webb could have agreed to perform such a pointless exercise without any apparent reservations. There is nothing in her report to indicate that she had asked for other contemporaneous specimen signatures or even for signatures which pre-date the dispute itself. Nor does her report indicate that she is applying the standards that would be expected of an expert witness in Court or Tribunal proceedings. As it happens, there are available several samples of the Respondent's pre-August 2018 signature. These include the Consent Order, the TR1s, and the Statement of Truth in support of the ADV1 dated 2nd September 2015 (which resulted in her registration). These signatures are entirely consistent with those on the counterpart Licences. The anomalies are the August 2018 signatures which are quite different and must, in my judgment, have been deliberately created by the Respondent to support the allegation of forgery.

33. It may also be noted that the witness to the counterpart Licences, Mr William Bibby, has not come forward to give evidence that he did not sign the documents. The Respondent has given hearsay evidence that he does not recall witnessing the documents, but no explanation has been given as to why he himself has not made a statement. He was also the witness on the TR1 relating to the Mews.

34. Taking the Respondent's evidence as a whole, I regret to say that much of it cannot be relied upon. It is apparent that she bears considerable ill-will towards Mr Campbell, and said on more than one occasion that he had done much better financially from the divorce settlement, whereas her situation is perilous, with interest under the bridging loan accumulating inexorably. I think that her unfortunate situation has – perhaps understandably – caused her to lose all objectivity, and she said in evidence anything which she thought might help her case without regard to the truth. She has challenged the authenticity of certificates emanating from the Isle of Man Companies Register without any basis. She has denied signing the Consent Order, which was counter-signed by her own solicitor. She denies signing the transfer of the Mews, which she was obliged to do under the terms of the Consent Order and which led to Mr Campbell's registration. This was all done because the signatures were identical to her signature on the Licence relating to the Garden land, and if she admitted the authenticity of one signature she would have to accept that they were all authentic.

Should the register be rectified?

35. In my judgment this case is on all fours with Baxter v Mannion, the Respondent was registered with title to the Garden Land by mistake, and there is jurisdiction under Sch.4 to the LRA 2002 to alter the register by reinstating Wilton's name as proprietor.

36. Since she is not in possession of the Garden Land, she is not entitled to the protection under Sch.4 para 6(2) afforded to proprietors in possession. It is not clear on the evidence whether she was in possession at the date of Wilton's application. Even assuming that she was, in my judgment the relevant date for considering the point must be the date on which the registrar or Tribunal decides whether to exercise the power under Sch.4 – that is, in the present case, the date of the hearing before me. Furthermore, given the findings that I have made, it is clear that the Respondent has, at the very least, caused or substantially contributed to the mistake by lack of proper care. In her application to the Land Registry she failed to mention the existence of the Licences, or the connection between her and Sterling, or the fact that she entered into possession of the Garden Land by virtue

of her connection with Mr Campbell. It seems improbable that she had simply forgotten the 2007 arrangements when she made her application. She must have retained sufficient documentation from that period – including the Licences themselves - to be guilty of carelessness at least in not disclosing the relevant documents. If she had done so, it is very unlikely that she would have obtained a title. Furthermore, she had sufficient information available to identify Sterling Securities Limited as the trustee of the Northbridge 02 Trust. This statement, made to the Land Registry in the ADV1, is disingenuous: *“I have researched and checked Sterling Securities Limited. I believe an Isle of Man company with that name and number 012743C was dissolved in 1989.”* She must or at the very least ought to have known that Sterling was in existence until the name change in 2004. She had available all the relevant documentation.

37. Even if I am wrong on these points, and she is to be treated as being in possession of the Garden Land, and is not subject to para.6(2)(a), I consider that it would be unjust for the alteration not to be made. The following paragraphs from the judgment of Jacob LJ in Baxter v Mannion are in point: *“41. It is common ground that the Adjudicator overlooked the fact that Mr Baxter had, by the time of the application, assumed possession of the land. So Sched. 4(6)(2) applied. Putting aside sub-paragraph (a), the question which the Judge assessed for himself was this: would it be unjust not to put Mr Mannion back as registered title holder. He held it would be, saying that it was a matter of "simple justice." And so it was. Mr Baxter had made an unjustified attempt to get himself title. Mr Mannion would otherwise lose his property. 42. The only factor to which Ms Galley could point to suggest that it would be unjust to alter the register now was that Mr Mannion had failed to return the NAP form when he could have done. Mere failure to operate bureaucratic machinery is as thistledown to Mr Mannion losing his land and Mr Baxter getting it when he had never been in adverse possession. There is nothing in this point.”* In the present case, it might be argued that Wilton bears some responsibility for the error, in view of the letter written to the Land Registry and referred to in paragraph 8 above. It could certainly have been more diligent in ascertaining that the Garden Land was still registered in Sterling’s name and was an asset of the trust. Having identified Sterling as a Wilton Group company

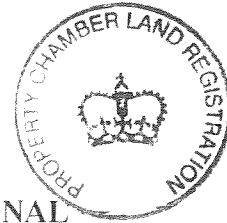
(albeit with a different company number), more could have been done to respond to the Land Registry. However, this cannot disguise the central point, namely that the error was caused by the Respondent's deliberate failure to give the Land Registry a full account of the circumstances in which she went into and remained in possession of the Garden Land.

38. There remains one final issue – are there exceptional circumstances within the meaning of para.6(3) which justify not making the alteration? No such circumstances have been specified by the Respondent, but she has given evidence as to her current financial situation, and the difficulties which she says have been caused to her by the existence of the Garden Land. She has said that there are potentially negative effects on the ability to sell the House caused by the possibility of a development on the Garden Land. The Applicant disputed this evidence, although a report from Strutt & Parker was produced which suggests that there might be some remote “hope” value.
39. The present position is that the House has been repossessed, and the mortgagee will be under a duty to obtain a reasonable price on sale. There is insufficient evidence before me to establish whether or not the Garden Land has any effect on the saleability of the House. The terms of the Licence granted by the Respondent pursuant to the Consent Order make it clear that the right to access to the Garden Land ceases once the Respondent vacates the House, which has now occurred. The Garden Land is, therefore, landlocked. Whilst this does raise questions as to why the parties are spending money on litigating this point, it seems very unlikely that the existence of the Garden Land could have any real effect on the saleability of the House. The Garden Land, although accessible through the gate in the south-western corner of the rear garden of the House, does not abut the rear boundary of the House. It actually lies behind the rear gardens of nos. 7 to 13 Northmoor Road.
40. On the basis of the evidence before me, I am unable to conclude that there are any exceptional circumstances present which would justify not making an order to alter the register.
41. I shall therefore direct the Chief Land Registrar to give effect to the Applicant's application in Form AP1 dated 18th July 2017 Generally speaking, in this

Tribunal costs follow the event. I am therefore proposing to make an order for costs on the standard basis against the Respondent. It is likely that a detailed assessment will be ordered. If the Respondent wishes to object to such an order, I direct her to file and serve her written submissions within 14 days of receipt of this Decision and Order, and the Applicant may respond within 7 days thereafter. I shall then reconsider the file.

Dated this 8th day of February 2019

Owen Rhys



BY ORDER OF THE TRIBUNAL