

REF/2019/0025

**PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL**

**LAND REGISTRATION ACT 2002
IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

BETWEEN

JOY ELSIE WILKS

APPLICANT

and

TERESA JOY BRADY

RESPONDENT

**Property Address: Land Lying to the South of Crownleaze, Soundwell, Bristol
BS16 4QU
Title Number: GR351555**

ORDER

UPON HEARING the Applicant and the Respondent.

IT IS ORDERED that:

The Chief Land Registrar do cancel the Application dated 8 August 2018 made by the Applicant to be registered as proprietor of the above land pursuant to Paragraph 1 of Schedule 6 to the Land Registration Acts 2002.

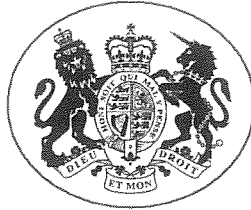
Dated the 2nd day of September 2019.

BY ORDER OF THE TRIBUNAL

Roger Cohen



Roger Cohen sitting as a Tribunal Judge



[2019] UKFTT 0631 (PC)

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BS16 4QU
Title Number: GR351555**

**Before: Mr Roger Cohen sitting as Judge of the Property Chamber of the First-
tier Tribunal**

**Sitting at: 10 Alfred Place, London W1
On: Thursday 8 August**

The Applicant appeared in person
The Respondent appeared in person

DECISION

Claim to title of registered land by adverse possession; Paragraph 1 and 5(4) of Schedule 6 to the Land Registration Act 2002; whether paper owner consented or licensed possession by the Applicant; whether Applicant in factual possession and had requisite intention to possess; whether Applicant had a reasonable belief in her ownership of the land in question

Cases referred to:

Chapman v Godinn Properties Limited [2005] EWCA Civ 941

J.A. Pye (Oxford) Limited v Graham [2003] 1 AC 419

Powell v MacFarlane (1977) 38 P&CR 452

Thorpe v Frank [2019] EWCA Civ 150

The Issue

- 1 The issue in this reference is whether the Chief Land Registrar must give effect to an application to register a title by adverse possession.
- 2 The application was dated 8 August 2018 and made by the Applicant (“**Ms Wilks**”) in respect of a small parcel of land known as land lying to the south of Crownleaze, Soundwell, Bristol, BS16 4QU, the title to which was registered at HM Land Registry under title number GR351555. I shall refer to this land as “GR3”. The registered proprietor of GR3 has since 2 February 2011 been the Respondent (“**Ms Brady**”). Ms Brady had objected to the application on 15 November 2018 leading to a reference to this Tribunal on 4 January 2019 pursuant to section 73, Land Registration Act 2002.
- 3 I did not undertake a site visit because the parties did not request that I do so. Nevertheless, the arrangement of GR3 and its environs were apparent from the documents and the evidence.

The Background

- 4 The law of adverse possession in relation to registered estates is now governed by the Land Registration Act 2002, (“**the Act**”) which, so far as is relevant, came into force on 13 October 2003. Ms Wilks’ application was made under Paragraph 1 of Schedule 6 of the Act. This meant that the

Ms Wilks case was that she had been in adverse possession of GR3 for the period of 10 years ending on 8 August 2018. On 15 November 2018, Ms Brady, as she was entitled to do, gave a notice to the Chief Land Register in form NAP requiring the registrar to deal with the application under Paragraph 5 of Schedule 6 to the Act as well as objecting to the registration of Ms Wilks as the proprietor of GR3 on the grounds there stated.

5 Ms Wilks' application stipulated that in circumstances where Ms Brady gave that notice, Ms Wilks would rely on the condition in Paragraph 5(4) of Schedule 6 to the Act. Thus it was Ms Wilks' case that:

- (a) GR3 was adjacent to land belonging to her;
- (b) the exact line of the boundary has not been determined;
- (c) for at least 10 years of the period of adverse possession ending on 8 August 2018 Ms Wilks, (or any predecessor in title) reasonably believed that GR3 belonged to her; and
- (d) GR3 was registered more than one year prior to the date of the application

Thus, the first question that has to be decided is whether Ms Wilks was in adverse possession of GR3 for 10 years ending on 8 August 2018. If the answer to that question is "yes", the next question is whether Ms Wilks has satisfied the condition in Paragraph 5(4) of Schedule 6 to the Act. If the answer to that question is also "yes", then effect ought to be given to Ms Wilks' application. If the answer to either question is "no", then Ms Wilks' application ought to be cancelled.

Adverse possession

6 For possession of land to be adverse it must be without the licence, consent or permission of the owner. If that is the case, the law stipulates two requirements for adverse possession. These were set out in *J A Pye (Oxford) Limited v Graham* as being:

- (a) factual possession; and

(b) an intention to possess.

Factual possession

7 In *Powell v MacFarlane*, Slade J said, at pp 470-471:

“Factual possession signifies an appropriate degree of physical control. It must be a single and [exclusive] possession, though there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... 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.”

The House of Lords in *J.A. Pye (Oxford) Limited v Graham* agreed with this statement of the law.

Intention to possess

8 In *Pye*, the House of Lords considered also intention to possess. At paragraphs 42 -43, Lord Browne-Wilkinson said:

“It is clear that, at any given moment, the only relevant question is whether the person in factual possession also has an intention to possess: if a stranger enters on to land occupied by a squatter, the entry is a trespass against the possession of the squatter whether or not the squatter has any long term intention to acquire a title. This requirement of an intention to exclude the owner as well as everybody else has been repeated in subsequent cases. In *Powell's* case Slade J ... reformulated the requirement (to my mind correctly) as requiring an "intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with the paper title

if he be not himself the possessor, so far as is reasonably practicable and so far as the processes of the law will allow".

9 Lord Browne-Wilkinson added at paragraph 46 that "the necessary intent is an intent to possess not to own and an intention to exclude the paper owner only so far as is reasonably possible".

10 A recent decision of the Court of Appeal considered whether factual possession had been proved. In *Thorpe v Frank* [2019] EWCA Civ 150, the Court of Appeal considered whether the party claiming title by adverse possession had established the necessary possession of a disputed triangle of land between two garages in a residential close. That party had in fact laid down paving and that paving continued on site at all times after it was laid. McCombe L.J. with whom the other 2 members of the court agreed, said at [38]

"In considering the question whether the alleged possessor has been dealing with the land as an occupying owner might have been expected to deal with it, the nature of the land in question is very important. Here the land in front of the houses had always been open plan in character. To my mind, the paving of the relevant area with a permanent surface was a clear assertion of possession... that assertion of possession was sufficient for the purposes of the act..."

11 In the case of *Thorpe* it was found that the claimant did intend to possess the disputed land. However, in this reference, I have had to consider Ms Wilks' intention to possess GR3.

The site

12 GR3 is a plot at the eastern end of an estate road in a residential district in the Bristol area, known as Crownleaze. Immediately to the south of GR3 is 34 Crownleaze, the title to which is registered at HM Land Registry under title number AV11922. Ms Wilks has been the proprietor of 34 Crownleaze since 10 November 1975. I find that the exact line of the boundary between GR3 and 34 Crownleaze, which are adjacent, has not been determined. To the north is 45 Crownleaze which is the address of Mr Masters whose letter dealing with an event in 2009 was before the

Tribunal. On its western boundary, GR3 is fenced. The fence includes a gate through which one can access the garden of 15 Gladstone Street. The proprietors of 15 Gladstone Street have car parking off Crownleaze so they pass through the gate onto GR3 and from there to Crownleaze and back.

- 13 On the three sides apart from the eastern, there is a lip edged with pebbles or stones marking the boundary. There is no physical barrier or obstacle to prevent anyone having access to or from GR3. In the words of Ms Francis (Ms Wilks' daughter who represented her at the hearing) , GR3 is on those 3 sides "open plan". 34 Crownleaze has windows overlooking GR3. The dimensions of GR3 were not given in evidence but one photograph suggests they are 3 cars' widths by the length of a small private car.

The disputed land

- 14 Mrs Brady's father ("Mr Brady") was the builder who developed that part of Crownleaze relevant to this application. The official copies of the registers of title both to GR3 and to 34 Crownleaze refer I their charges registers to transfers made by Jim Brady (Builders) Limited. In the case of Crownleaze, the transfer was to Derek James Wilks and Ms Wilkes. Whilst numbers 34 and 45 were sold off, Mr Brady or his company retained ownership of GR3 being registered as the proprietor in 1972. It is not clear in whose name GR3 was registered when title GR35155 was opened on 1 February 1972.
- 15 However, on 8 February 2011, solicitors wrote to Mr and Mrs J Brady (at an address in Devon) confirming the transfer of "the small strip of land lying to the south of Crownleaze to your daughter, Teresa (i.e. the Respondent) has now been completed by the Land Registry. Also on 8 February 2011 the same solicitors wrote to Ms Brady (at an address near Bath, Somerset) confirming the completion of the registration of her title to "the strip of land lying to the south of Crownleaze".
- 16 In 1975, Mr Brady laid out gravel on GR3 in order to deal with an infestation of weeds. According to Ms Wilks, no sub-stratum was laid under the gravel. This enabled the return of the weeds. According to Ms

Brady, it remained a building site. Whatever the make-up of the surface in 1975/6, the parties agreed at the hearing that in 1975/6 GR3 was “not nice” and “unkempt”. Accordingly, in 1976 Ms Wilks, for whom, she told me, gardening is a hobby, took it upon herself to lay turf on GR3. Mrs Wilks in her evidence could recall neither the amount that spent on turfing GR3, nor the scale of the expenditure (whether or not it was regarded at the time as say a “large” sum).

- 17 As the photographs produced to the Tribunal record, GR3 is turfed, the turf is cut to a tidy height and there are 3 bushes, and one feature being a hexagonal box standing on a red-brick base filled with pebbles and a box resting on top.

Witnesses

- 18 I heard evidence from Ms Wilks and Ms Brady. Ms Brady had some questions for Ms Wilks and Ms Francis had some questions for Ms Brady. I asked questions of both parties by way of judicial examination.
- 19 Given that there was a relatively small amount of documentary material spanning the 44 years from 1975, there were no conflicts of recollection not explicable by the fact that the witnesses had not seen or heard of the event spoken of by the other.
- 20 I am satisfied that both witnesses were seeking to deal honestly with the questions put to them. I have not, however, accepted the entirety of Ms Wilks’ evidence for the reasons given below.
- 21 There were some letters from people with some knowledge of relevant events but no other witnesses were called. I treat with caution evidence in writing where the witness has not attended for cross examination.

The parties’ positions

- 22 In her application to HM Land Registry Ms Wilks stated that GR3 had been used as part of her garden. It was not enclosed, with neither a gate nor boundary features. It was scrap land when she purchased 34 Crownlease

on 25 October 1975. Since this date she had turfed, tended and put ornamental plants and pots on GR3. Ms Wilks stated that she had never had any contact with Ms Brady who, so far as Ms Wilks was aware, had never visited or tended GR3. In her statement of truth in support of her application, Ms Wilks stated that she had taken physical control over GR3 since 1974. Ms Wilks added that the land was overgrown with weeds and rubble in 1975. Together with her late husband, they cleared and disposed of this and cleared it all before laying turf in 1976. The ornamental plants and bushes were planted by Ms Wilks in the summer of 2000. Ms Wilks has maintained them and the lawn until 8 August 2018. Ms Wilks said that the possession which she claimed was without the consent, licence or permission of anyone at any time.

23 In her statement giving details of her objection to HM Land Registry, Ms Brady said that her father was the original builder of the properties in Crownleaze and deliberately retained GR3 upon sale of the individual properties. Ms Brady stated that her father marked the boundaries between GR3 and 34 Crownleaze and between GR3 and 45 Crownleaze with stones. Her father explained to her the importance of visiting the land and walking over it, given the risk of someone trying to claim the land. Her father transferred GR3 to her as she lived nearer and would be able to walk over the land. Ms Brady did not dispute that GR3 had been maintained by Ms Wilks and her husband but this was with the permission of her father. Ms Brady was not present when the initial conversation took place between her father and Ms Wilks/her husband and she did not know if it was before or after 1975. However, her father told her that he said that the Wilks were permitted to keep GR3 tidy but it did not mean that the land would be theirs. Ms Brady last walked over the land on 30 April 2016. No one prevented her going onto the land. She had never been challenged when walking on GR3 which is unenclosed.

24 From these statements it follows that there are four factual issues in need of determination being:

1. Did Mr Brady consent to the Wilks' tidying and tending of GR3?

2. Does Ms Wilks tending of GR3 amount to actual possession of that land?
3. Did Ms Wilks have the requisite intention to possess GR3?
4. Did Ms Wilks reasonably believe that GR3 belonged to her for at least 10 years ending on 8 August 2018?

25 I shall now summarise the evidence and made my findings of fact. I will then answer the above four questions.

26 Ms Wilks' statement of case to this Tribunal stated that in around 1975 Ms Brady's father laid gravel to GR3 after Ms Wilks and her husband complained to the Council and Mr Brady about the overgrowth of weeds and the collection of rubbish making this area an eyesore. There was never any conversation between Mr Brady and Ms Wilks and her husband about them maintaining or tidying GR3. In 1976 GR3 again become overgrown. Ms Wilks attempted to contact Mr Brady father but to no avail.

27 From 1976 until the present Ms Wilks had removed the stone rubble and rubbish from GR3 and laid it to turf and with the ornamental features. Ms Wilks maintains GR3 on a weekly basis with great pleasure integrating it with her own garden. Ms Wilks had not seen or heard of Ms Brady or her father since 1975.

28 In her evidence at the hearing, Ms Wilks accepted that Mr and Mrs Britton of 15 Gladstone Street used GR3 for access to and from Crownlease. Ms Wilks denied asking Mr Brady for consent or permission. In 43 years she had never seen Mr Brady.

29 At some time after the visit from Mr Francis, Ms Wilks was advised by neighbours that she could apply for title to GR3 by adverse possession. Ms Wilks accepted that she told Mr Francis that Mr Brady owned GR3.

30 Ms Wilks said that she maintained GR3's boundaries.

31 Ms Wilks was born in 1942.

- 32 Ms Wilks did not seek ownership. She wanted to have a nice view out of her window looking out on GR3 rather than looking at an unkempt area.
- 33 Ms Wilks accepted that she had seen people go across GR3 and on occasion she had asked them if they needed help. She had never had occasion to tell someone to leave GR3.
- 34 In her statement of case, Ms Brady stated that her father developed Crownleaze in the 1970s and retained GR3. He regularly visited the site and walked the land to protect his ownership. He advised Ms Brady that he had given the occupier of 34 Crownleaze permission from the outset to tend the plot as they did not want an eyesore. The boundaries remained clearly visible and he did not agree to give GR3 to 34 Crownleaze.
- 35 She had visited Crownleaze including GR3 in 2010. In May 2016 she visited Crownleaze with her partner, David and took photographs. Ms Brady was aware that there was a gate in the fence enabling access to 15 Gladstone Street. Her father passed away in November 2017. In April 2018 Ms Brady was approached by Ben Francis who was told, he said, by Ms Wilks that GR3 belonged to “Brady the Builder”.
- 36 In her evidence at the hearing Ms Brady said that her father had told her that Mr and Mrs Wilks asked him for permission to tend GR3. Her father told her that he replied that if they wanted to tidy GR3 it was up to them. Ms Brady had no knowledge of a possible purchaser other than Mr Francis.
- 37 Ms Brady accepted that she could only say what her father had told her. She had no personal knowledge of any conversations with the Wilks. Mr Francis approached her having spoken with his colleague Ms Hill to Ms Wilks. Subsequently, Ms Brady negotiated with Mr Francis for a sale of GR3 and a price was agreed. Then her solicitor informed her that Ms Wilks had applied to the Land Registry and the negotiations did not proceed.
- 38 The photographs produced by the parties show that the boundary between GR3 and 34 Crownleaze is marked by a line of kerb stones and that the

colouration of the turf on GR3 and the surface covering of 34 Crownleaze are distinct.

39 I now turn to my findings of fact upon each of the 4 questions identified at paragraph 24 above.

5. Did Ms Brady consent to the Wilks tidying and tending GR3?

40 It is, in my judgment, material that in 1975 both Ms Wilks and Derek James Wilks were the transferees of 34 Crownleaze. It is tenable that Ms Wilks is correct when she says that she did not seek consent, although she cannot now recall or was never aware of a conversation between Mr Wilks and Mr Brady.

41 I exercise caution in accepting second hand evidence of conversations long ago. However, Ms Brady's evidence of what she was told by her father was credible and her father having passed away cannot confirm it.

42 I also bear in mind that Mr Brady was a builder and the developer of the material part of Crownleaze. Ms Brady is correct in saying that it was her father's deliberate decision to retain GR3 given that title was registered at the time that 34 and 45 Crownleaze were sold. Furthermore, the titles of parties' properties show that there were restrictive covenants and grants of rights which are consistent with due care and attention being given to the conveyancing process.

43 I recognise that I do not have evidence as to how precisely any conversation between Mr Brady and either or both of the Wilks came about.

44 However, on balance, I conclude that Mr Brady's consent was sought and obtained in about 1975 or 1976 to the tidying and tending of GR3 in accordance with the state and condition into which it was put by Ms Wilks.

6. Did Mrs Wilks' tending of GR3 amount to factual possession of that land?

45 There is no real dispute that from about 1975-76 Mr and/or Ms Wilks tidied up GR3 by removing rubbish and putting down turf. The Tribunal had

photographic evidence dated 1986/7. I find that GR3 was tidied and turfed laid by Ms Wilks in about 1976. Does this amount to factual possession? In her statement of case to HM Land Registry, Ms Brady observed that there was no fence or other obstacle to enclose the land. (There was however a gate in the fence on the boundary with 15 Gladstone Street).

46 The question is whether Ms Wilks established a sufficient degree of exclusive physical control.

47 I take into account the following facts which I find:

- (1) the location of GR3 at the end of an estate road in a residential setting;
- (2) the position of GR3 between two houses and a garden;
- (3) the dimensions of GR3;
- (4) the photographic evidence which suggests a consistent standard of care and attention to the tending of the plot since the earliest photograph dated 1986/7;
- (5) the positioning of oriental features on GR3.

48 In my judgment, these together amount to a sufficient degree of sole possession and use in the circumstances as I find them to be. Ms Wilks does not have to prove absolute physical control. So the occasional presence of others (whether or not Ms Brady) does not detract from my conclusion. Nor does the exercise by Mr and Ms Britton of access and egress (whether or not they have an enforceable right of way) over GR3.

49 The absence of a fence or enclosure around the whole of the land is not, in my judgment, an impediment, in the circumstances of this case to Ms Wilks having proved factual possession for 10 years prior to 8 August 2018.

7. Did Ms Wilks have the requisite intention to possess GR3?

50 In *Chapman v Godinn Properties Limited* Chadwick LJ said at paragraph 28

“...each case must turn on its own facts. In a case of this nature, the court must ask itself what it is that would be expected of somebody in possession of land of this kind. What would such a person be expected to be doing in order to demonstrate his intention to exclude the world at large...”

In *Chapman*, the party claiming adverse possession gave evidence that he regarded the relevant land as his own.

51 The facts on which this reference turns are different. I take into account the following facts, which I find being:

- (1) Ms Wilks on her own evidence had no intention to own or to possess GR3. Her evidence at the hearing was that she wished to enjoy the amenity of a pleasant view from her window across GR3 and to enjoy gardening there.
- (2) Ms Wilks’ evidence was that she had never challenged anyone as to their use of GR3.
- (3) When approached in 2018 by Mr Francis and asked who owned the land she referred Mr Francis to Brady the Builders.

52 Accordingly, in my judgment, Ms Wilks did not possess the relevant intention to possess GR3 to sustain her case.

8. Did Ms Wilks reasonably believe that GR3 belonged to her for at least 10 years ending on 8 April 2018?

53 The answer to this question calls for an answer to a logically prior question. Did Ms Wilks believe that GR3 belonged to her for the relevant period? Ms Wilks’ evidence to me was that she knew that GR3 belonged to the Bradys. This is consistent with her answer to Mr Francis. It was Mr Wilks’ evidence that it was only at the suggestion of neighbours after the visit by Mr Francis that she became aware that she might be able to claim title. It is also relevant to note that had Ms Wilks held that belief it could have been tested by making searches at HM Land Registry and seeking legal advice if necessary. In the circumstances I find that Ms Wilks did not hold the requisite belief either reasonably or at all.

Conclusions

- 54 To summarise, I answer the 4 questions listed at paragraph 24 above as follows:
1. Yes
 2. Yes
 3. No
 4. No
- 55 It follows that Ms Wilks' application fails and I will order the Chief Land Registrar to cancel it.
- 56 This Tribunal has power to order costs. Generally, costs are borne by the unsuccessful party, here Ms Wilks. If there is any application for costs it should be made in writing to the Tribunal by 5pm on the date 14 days after the date of this decision.

Dated this 2nd day of September 2019

BY ORDER OF THE TRIBUNAL

Roger Cohen

Roger Cohen sitting as a Tribunal Judge