



REF/2015/0295

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Henry Trevallion and Jaqueline Estelle Trevallion

APPLICANTS

and

Lesley Ann Watmore & John Douglas Bell

RESPONDENTS

**Property Address: 46 Melville Street, Sandown, Isle of Wight, PO36 8LE
Title Number: IW79202**

Made By: Judge Elizabeth Cooke

ORDER

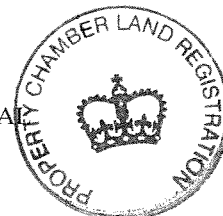
IT IS ORDERED as follows:

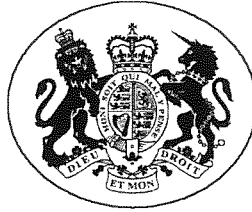
The Chief Land Registrar is to give effect to the original application dated 17 December 2013 to register the underlease dated 3 December 1951 as if the Respondents' objection had not been made.

Dated this 30 June 2016

BY ORDER OF THE TRIBUNAL

Elizabeth Cooke





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DECISION

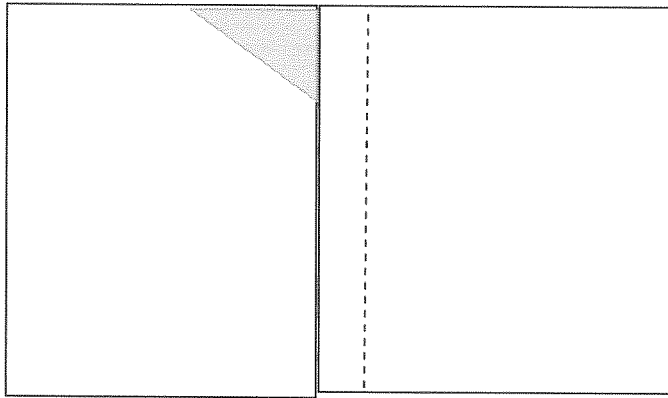
1. The Respondents, Miss Watmore and Mr Bell, are the registered proprietors of 52, Melville Street, Newport, on the Isle of Wight. Their freehold title is registered under title number IW69549; it appears that it was first registered in 2009. The Respondents bought it in 2013.
2. The Applicants, Mr and Mrs Trevallion, are the registered freehold proprietors of 46 Melville Street. They applied in December 2013 to register a leasehold title to a

triangular piece of land in the corner of the freehold title to number 52. They say that their leasehold title overrode the first registration of the freehold title to number 52, and the transfer of the freehold to the Respondents, so that the registered freehold is subject to the unregistered lease.

3. The Respondents disagree, and objected to the registration; the dispute was referred to this Tribunal in April 2015. I conducted a site visit on 20 June 2016, and I am grateful to the parties for allowing me access to their gardens. A hearing took place before me in Newport on 21 June 2016, where the Applicants were represented by Mr Jeremy Burns of counsel, and Miss Watmore represented the Respondents. Both Mrs Trevallion and Miss Watmore gave evidence; I have no doubt that each gave evidence honestly.
4. I have directed the Chief Land Registrar to give effect to the Applicants' application as if the Respondents' objection had not been made. In order to explain my reasons, I give some factual background and then go through the legal issues. Sadly, as so often happens, this has become a very angry dispute, and the parties have become embroiled in some irrelevant issues. As I explained to the parties at the hearing, my decision turns upon two very dry points of law, pursuant to the requirements of the Land Registration Act 2002, and it is not influenced by the conduct of negotiations between them.

The factual background

5. Numbers 46 and 52 are next door to each other. In 1968 Mr and Mrs Trevallion took an assignment of a long underlease of number 46; there was a one thousand year headlease granted in 1854, and the underlease, granted in 1954, was for the same term less three days. The area demised by the underlease was an irregular shape, and it included the triangle of land that is now in dispute.
6. In 1989 the Applicants purchased the freehold of their property, and it was registered (the Isle of Wight became an area of compulsory registration in 1986). Their freehold title was a regular shape and did not include the disputed triangle. On the next page is a sketch plan showing the relationship between the two freehold titles and the triangle. The disputed triangle is shaded. The plan is not to scale and does not show the relative sizes of the properties and the triangle.



7. The disputed triangle is separated from the garden of number 46 by a footpath (which is part of the title to number 46; there is no public access to it). The other side of the footpath is shown by a dotted line on the plan above. It is not in dispute that the triangle has been used for storage by the Applicants since 1968; they have kept items such as canoes and cement mixers on there.
8. So the question is: did the underlease, which everyone agrees was validly granted, override both the registration of the freehold title to number 46, and the transfer of the registered freehold title to the Respondents? Hence my explanation to the parties at the hearing: this dispute turns on some dry legal questions.
9. I should add that there is no information available about the intermediate lease. Mr and Mrs Trevallion have paid rent to a Mrs Martin, but not for some years now.
10. I should also make it clear, in case the Respondents are in any doubt about this, that the Applicants have not at any time been under any obligation to register their leasehold interest.

Did the underlease override the registration of the freehold title to number 46?

11. There can be no dispute about this question. Paragraph 2 of Schedule 1 to the Land Registration Act 2002 states that among the interests that override first registration are:

“An interest belonging to a person in actual occupation...”

12. It is not in dispute that the Applicants were in actual occupation of the disputed triangle in 2009, and indeed since 1968.
13. Accordingly, when the freehold title to number 52 was first registered, the registered proprietors took it subject to the leasehold interest in the triangle.

14. Did the underlease override the transfer of the freehold of number 46 to the Respondents?

15. The question to be asked in relation to the transfer of the freehold to the Respondents is slightly different and more complex, because the relevant provision is paragraph 2 of Schedule 3 to the Land Registration Act 2002, which gives overriding status to:

“An interest belonging at the time of disposition to a person in actual occupation, ... except:

...

An interest:

- (i) which belongs to a person whose occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition and
- (ii) of which the person to whom the disposition is made does not have actual knowledge at that time.”

16. Accordingly the Respondents take free of the underlease of the disputed triangle only if both (i) the occupation would not have been obvious on a reasonably careful inspection of the land at the time of the disposition and (ii) they did not have actual knowledge of that occupation.

17. Both those conditions must be satisfied in order for the Respondents to succeed.

18. It is convenient to deal first with the second question, because it can be disposed of easily.

Did the Respondents have actual knowledge of the occupation of the disputed triangle when they bought number 52?

19. Miss Watmore has made it clear throughout the dispute, and gave clear evidence, that she did not know about the existence of the disputed triangle when she bought number 52. She was living on the mainland. She did make three visits before buying but she did not see the fence that marks the boundary with the triangle because it was covered by a thick fuschia bush. I have seen the bush and I accept what she says.

20. There was produced in evidence a plan attached to a planning application made in 2013, relating to number 52 and showing the disputed triangle as not being part of the

land. I accept Miss Watmore's evidence that she did not see that plan until after she purchased.

21. There is no evidence from Mr Bell but no point was taken about that.
22. Accordingly I find that the Respondents did not have actual knowledge of the Applicants' occupation of the disputed triangle when they bought number 52, because they did not even know that the triangle was there.

Would the occupation of the triangle have been obvious on a reasonably careful inspection of the land when the Respondents bought number 52?

23. I approach this question with caution because I was able to see the triangle from number 46's side, where of course it is abundantly obvious. The question is whether it would have been obvious on a reasonably careful inspection only from the garden of number 52.
24. There is a little ambiguity here. Is the reasonable inspection supposed to be of the whole of number 52, or only of the disputed triangle? I do not need to resolve that ambiguity. The occupation would have been abundantly obvious on a the slightest look at the triangle, and Miss Watmore accepted as much at the hearing; and I find that the existence of the triangle would have been obvious on a reasonably careful inspection of number 52.
25. I note that the survey carried out for the Respondents before they bought did not pick it up. The survey says that the boundaries are well-defined. But it does not say where they are, so that does not take us any further. The survey concentrated on the building rather than the garden.
26. Miss Watmore's evidence at the hearing was that she discovered the fence which marks off the triangle when a builder was investigating the possibility of constructing a soakaway in that corner. She said that he cut away parts of the fuschia (but no trees) and came upon the fence. She agrees that she did not mention cutting away the fuschia in her statement of case and other correspondence, but she was clear about that at the hearing and I accept what she says. I saw the fuschia at the site visit and it is a splendid shrub. It now has a gap in it where the fence is visible, because it was trimmed in order to mend some storm damage. Miss Watmore produced a photograph from 2013 showing the fuschia as it was then. It is taken from some way away and

does not look straight at where the fence is; what it shows is a matter of opinion but I accept that the fence is not visible in that photograph (the lighter patch, which Mr Burns suggested was the fence, is, I think from its position, part of the bay hedge).

27. I accept Miss Watmore's evidence that the fence was not visible if you looked towards the fuschia; but that is clearly all she did and that is not, in my judgment, a reasonably careful inspection.
28. It is perfectly obvious from with the garden that the visible land is not a rectangle. I accept that Miss Watmore did not notice this, but obvious it is. The front of the fuschia is well away from the boundary of the freehold, in line with the front edge of the wendy house next to it. The statute requires a "*reasonably careful* inspection" and in my judgement a reasonably careful inspection, rather than a quick look, would have revealed that the garden was not the shape that the freehold plan said it was. A reasonably careful inspection must at least look at the boundaries, and anyone walking round the garden looking at or for the boundaries would have parted the branches of the fuschia to see the fence behind it, without digging or cutting branches down. The fence behind it is about six feet high at present and it is perfectly possible to see through the fence to the signs of occupation behind it.
29. The fuschia bush may well have been allowed to grow luxuriantly in order to prevent the brightly coloured canoes or unsightly equipment being visible to people sitting in the garden. But a reasonably careful inspection would have made the existence of the triangle and its occupation obvious.

Conclusion

30. Accordingly the Respondents' objection fails.
31. I note that the Respondents may now be entitled to rent under the lease. I am aware that there has been some correspondence about this, and I observe in case it is of assistance that the recovery of arrears of rent more than six years old would appear to be barred by the Limitation Act 1980. I also note that there has been some correspondence about the exact extent of the disputed triangle, and I urge the parties not to waste time and energy in what must be a futile dispute about dimensions. It is not in dispute that the fence has been in position for decades and (again, in case it is of assistance), I express the view that the line of the fence marks the boundary of the

underlease, rather than the measurements derived from scaling up the plan in the underlease.

32. In this Tribunal costs normally follow the event, and this is a matter of which the parties are warned when the matter is referred to the Tribunal. If the Applicants seek an order for costs incurred since the date of the reference they should make an application, together with a schedule of costs, within 28 days of the date of this decision; the Respondents will then have 14 days to make any objection, either about liability or about the amount claimed, and the Applicants will then have 14 days to reply. I will then make a decision about liability for costs. If I make an order that costs are to be paid by the Respondents I will either make a summary assessment of the amount or refer the matter to a costs judge, depending upon the amount claimed and the nature of the objections if any.

Dated this 30 June 2016

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL

