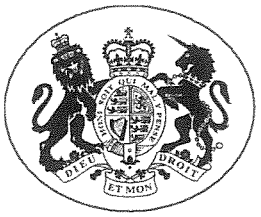


[2019] UKFTT 0048 (PC)

REF/2017/1653

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

MR AVIEL PALMER
MR NESSHEL JEROME PALMER-IDES

APPLICANTS

and

MR MAGDY GHATTAS

RESPONDENT

Property Address: Llysin, Dolau, Penybont, Llandrindod Wells, Powys LD1 5UN

Title Number: CYM690152

Before: Judge Tozer

Sitting at: Cardiff Civil Justice Centre

On: 24 October 2018

ORDER

UPON HEARING THE APPLICANTS AND COUNSEL FOR THE RESPONDENT (Mr Dyson)

IT IS ORDERED THAT:

1. The Chief Land Registrar shall give effect to the Applicant's application dated 9 September 2016, as if the Respondent's objection dated 27 March 2017 had not been made;

2. If the Respondent opposes an order that he should pay the Applicants' costs, he shall by 5pm on 11 January 2019, file and serve written submissions explaining the basis for the opposition.

3. Unless the Applicants accept that the Respondent should not be ordered to pay their costs, the Applicants shall by 5pm on 1 February 2019, file at Tribunal and serve on the Respondent's solicitors, (a) a Schedule of Costs setting out the costs claimed in form N260 (available online); and (b) written submissions in answer to the Respondent's submissions. The Applicants will require the assistance of the solicitors previously acting for them to complete the form and should approach them as soon as possible for assistance with this.

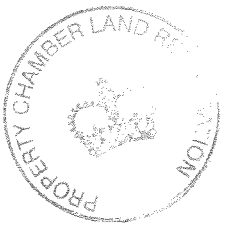
4. A determination about costs will thereafter be made on paper, unless the Tribunal orders a hearing or further submissions.

Judge Tozer

Dated this 4th day of December 2018

Stephanie Tozer

BY ORDER OF THE TRIBUNAL



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DECISION

Keywords: adverse possession – receipt of rent - minor - agent

1. On 9 September 2016, the Applicants applied for first registration of a property known as Llysin, Dolau, Penybont, Llandrindod Wells, Powys LD1 5UN. For the reasons I set out below, I determine that the Applicants are entitled to succeed, despite the objection of the Respondent.

Background Facts and Parties

1. The Applicants are brothers. There is a third brother, Noah, who lives in the US and took no part in the proceedings.

2. The Applicants' father was a Donald Gene Palmer. On 7 December 1971, he, together with a woman calling herself Carol Palmer, bought the property known as Llysin, Dolau, Llandrindod Wells LD1 5UN with which I am concerned ("the Property") as joint tenants. The Property is not registered.

3. As I understand it, the Applicants' father met the Applicants' mother, Livia Ides ("Livia") in the mid 1970s. Livia had herself been married in 1970 and divorced in 1973. The documents suggest that the Applicants' father commenced a relationship with Livia, and divorced Carol. That relationship (with Livia) lasted until 1986. Noah was born in 1977; the First Applicant, Aviel, in 1980 and the Second Applicant, Nesshel, in 1986. Shortly afterwards, Livia and her sons went to the Netherlands to live.

4. Although the Respondent suggested that Livia and the Applicants' father might have been married, there was little evidence to support that assertion, which was denied by the Applicants and Livia (who did not appear but had filed a written statement). Neshhel said that his mother had been unable to get anything from his father's estate when he died because they had not been married. It also does not appear, from emails dating from 2004 provided to me, to have been Noah's understanding that his parents were married: he suggested that Livia had run out of church on the date they were supposed to get married. Furthermore, I was shown an official record from the Netherlands relating to Livia which did show her previous marriage, and her subsequent marriage to the Respondent, and the births of her 3 children by the Applicants' father, but did not record that she was ever married to him. Accordingly, I reject that suggestion.

5. The Property was occupied for many years by a Michael Pace. As I understand it, Mr Pace moved in in 1975 by arrangement with the Applicants' father. The Applicants' father created a document called a "Formal Rental Agreement" in 1993, recording a rent of £15 per week.

6. The Applicants' father died in 1996. At this time Noah was 18 and living in the US with his father; Aviel was 15 or 16 and Nesshel was 9. Livia and Nesshel went to the US to help Noah put his father's affairs in order, and, I think, at that stage found the original 1971 conveyance of the Property. As I have indicated, the evidence was that the sons were aware, from the outset, that Livia was not entitled to anything from their fathers' estate because they were not married, but as his sons, they did have an entitlement, or at least Livia understood that they did.

7. There is little evidence as to whether Carol Palmer was still alive when the Applicants' father died in 1996. If she was not, then the Applicants (together with Noah) would indeed have been entitled to the Property on their father's death intestate (subject, I think, to taking out letters of administration). However, the Applicants accept that they cannot prove that Carol Palmer was dead in 1996; indeed, Nesshel told me that his researches suggested she appeared to be still alive now.

8. I therefore proceed on the basis, adverse to the Applicants, that Carol Palmer remained alive in 1996. She therefore became the legal owner of the Property by survivorship in 1996.

9. A curiosity of the case was that it appears that Livia was advised, in 1997, that she had inherited the property by survivorship. Although the solicitor who gave this advice, who was at the time a trainee solicitor, provided a witness statement, she did not appear at the hearing to answer questions on her statement. Her explanation is that she must have seen a conveyance vesting the property in the joint names of the Applicant's father and Livia, but there is nothing else to suggest that any such conveyance, to which Carol Palmer would have had to be a party, existed. The letter suggested that the original conveyance was to be stored in the strong room at the solicitors' firm, E.P. Careless & Co. The only conveyance produced is that of 7 December 1971, which does provide for the Applicants' father and Carol to hold as joint tenants. I consider the most likely explanation is that the solicitor thought (whether because she was told this by Livia, or because she made an assumption) that Livia was Carol. However, the evidence does not appear to me to suggest that Livia was Carol. A US Court order dated 6 June 1978 records the (interlocutory) dissolution of the marriage between the Applicants' father and Carol, which makes it clear that they had been married; whereas, as I have already explained, I am satisfied that Livia was not married to the Applicant's father.

10. Livia did, however, marry the Respondent, in October 2000, apparently without discussing this with the Applicants beforehand at all. She opted to marry on the basis that all the property and debts belonging to her became jointly owned, as did any property and debts belonging to the Respondent. I have had no expert evidence of Dutch law about this, but the Respondent told me that the effect of their marriage was to vest all assets jointly from the outset.

11. It appears this made the First Applicant, Aviel, in particular, very cross. The Respondent told about an incident in December 2000 when there what sounded like a serious and violent fight between Aviel and the Respondent. The cause of this fight appears to have been that Aviel was concerned that his and Nesshel's position in relation to the Property had been prejudiced, or put at risk, by the marriage. This makes sense in the context of the Applicants' assertions (which I describe in more detail below) that they always understood that their mother was involved with the Property in order to secure it for them.

12. Livia and the Respondent divorced in 2013, in the Netherlands. The property aspects were resolved by the Dutch Court in 2015. As part of that process, the Dutch Court

made a finding that the Property was owned by Livia, and that it should be sold, with the proceeds being divided equally between Livia and the Respondent. The Applicants were not a party to those proceedings. However, one of the matters I must decide is the relevance of them to the matters before me.

13. The Respondent contends that the judgment of the Dutch Court dated 15 April 2015 requires me to proceed on the basis that Livia, and not Carol Palmer, was the legal owner of the Property at all material times. However, the judgment does not purport to say anything about the position in 1996: the judgment simply determined that as at April 2015, Livia was the owner of the Property. Even if I were to accept it were binding (and I consider this further below), it would not preclude me from holding that Carol Palmer was the true, paper, owner in 1996. I return to the relevance at the Dutch judgment below.

The Claim

14. The Applicants claim that they are now entitled to the Property, under the doctrine of adverse possession, on the basis that Carol Palmer has been kept out of possession of the Property for more than 12 years since their father's death. They have applied for first registration of the Property. The issue before me is whether they are entitled to be registered as proprietors of the Property.

The Law

15. Section 15 of the Limitation Act 1980 says:

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.

16. Section 17 says

..at the expiration of the period prescribed by this Act for any person to bring an action to recover land .... The title of that person to the land shall be extinguished.

17. Guidance is given in Limitation Act 1980 Schedule 1, paragraph 1 about when a right of action would have been treated as accruing to Carol Palmer: on the date when she was dispossessed, which means the date when someone else took up possession.

18. Possession is commonly defined as requiring:

(1) a sufficient degree of physical custody and control; and
(2) an intention to exercise such custody and control on one's own behalf and for one's own benefit

JA Pye (Oxford) Ltd v Graham [2003] 1 AC 419, esp at [40].

19. It is important to appreciate that the necessary mental attitude is not an intention to acquire property by adverse possession; it is simply an intention to possess. Thus it

does not matter if the person in possession thinks that they are the owner, in law or equity: *Pye at [42].*

20. If a person in occupation exercises control on behalf of someone else, as their agent, it is that other party who will be in possession: see *Jourdan & Radley-Gardner on Adverse Possession at paragraph 7-103.*

21. Although a minor probably cannot acquire legal possessory title, a minor can be in possession: *Jourdan & Radley-Gardner on Adverse Possession at paragraph 7-49 and 20-44.* Furthermore, a minor can be in possession via a parent who claims to take possession on behalf of the minor: *Willis v Earl Howe [1893] 2 Ch 545.*

22. Limitation Act 1980 Schedule 1 paragraph 8(1) says

"*...no right of action shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run....*

23. Limitation Act 1980 Schedule 8 paragraph 8(3)(b) says

"receipt of rent under a lease by a person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease shall be treated as adverse possession of the land."

The Issues

24. The questions which I must determine are therefore:

(1) Was Carol Palmer dispossessed? If so, when and by whom?
(2) Did the land cease to be in adverse possession thereafter?
(3) Are the Applicants the people in adverse possession of the Property?
(4) Is there anyone else who can assert a better title to the Property than the Applicants?
(5) Does the Dutch Court order prevent the Applicants' claim for adverse possession from being successful?

In order to answer those questions, the events following 1996 need to be considered in some detail.

25. In answering these questions, I was assisted by the written and oral evidence of both Applicants, and, to a lesser extent, of the Respondent, at a hearing on 24 October 2018. I found the Second Applicant, who I shall call Neshhel, a straight-forward witness and I accept everything he told me. As regards the First Applicant, who I shall call Aviel, I formed the impression that he was at times tempted to "gild the lily" and proffer answers when he was not sure of the truth of what he was saying – no doubt because (as was clear to me from the evidence) this Property means a great deal to both Applicants. I therefore treat his evidence with more circumspection. As for the Respondent, he had little relevant evidence to give, but, having elected to give

evidence despite not having prepared a witness statement, nonetheless he appeared reluctant to answer questions, including from me.

26. In addition, I had written evidence from Livia and Michael Pace (filed in support of the Applicants), and the solicitor who had advised Livia in 1997 (filed by the Respondent). Those witness statements were useful to give me the perspectives of those people, but in assessing them I have of course borne in mind that none of that evidence was tested by cross-examination. There was no evidence that any of those people were unavailable to attend the Tribunal.

27. I was also assisted by written and oral submissions from the Respondent's Counsel, Mr Dyson, and by submissions made by both Applicants.

28. On the basis of the evidence and the law as set out above, I make the following findings.

1997

29. It seems to me likely that, notwithstanding the solicitor's advice, Livia knew that she was not in fact entitled to the Property – ie she knew that the basis for the solicitor's advice was wrong. However, it does seem clear that Livia was concerned to take control of the Property when the Applicants' father died, and I expect that she used the solicitors' letter to show to interested parties to substantiate her claim that she was entitled to deal with the property. It appears that she made contact with Michael Pace, and either persuaded him that she had become his landlord, or persuaded him that she had a right to allow him back into occupation, and to resume occupation. Livia also contacted Powys County Council, in order to obtain payment of the arrears of Housing Benefit and Housing Benefit going forward.

30. From 1997, therefore, Livia took on the role of landlord, and Mr Pace appears to have understood that he was her tenant from this point. Did this amount to adverse possession by Livia?

31. By reason of Limitation Act 1980 Schedule 1 paragraph 8(3)(b), a person who receives rent and wrongfully claims to be the landlord is treated as in adverse possession.

32. However, it is important to consider the capacity in which Livia acted. Livia said, in her witness statement, that she was acting as the guardian of Aviel and Nesshel rather than in her own right when receiving the rent and claiming to be entitled to the Property. The Applicants agreed. The Respondent challenges whether this was in fact so, but also says that even if it were, this would not be sufficient for the Applicants to succeed in an adverse possession claim.

33. I deal first with that question of law. The Respondent cited no authority for the proposition that it is not possible to look further than the holder of the bank account in

order to establish who is receiving the rent. It does not strike me as likely that this is what Parliament intended – for the consequence of this submission would be that a person who paid professional managing agents to manage a portfolio of properties could not rely on the receipt of rent via the managing agents to show adverse possession of any property within that portfolio to which paper title could not be shown. Furthermore, section 8(3)(b) does not in terms require the enquiry to be limited to the (first) bank account into which rent is paid. In my view, what is required is to assess who is actually, or ultimately, receiving the rent, and see whether that person claims to be entitled to possession of the relevant land. In some cases, of course, that will be difficult to ascertain.

34. It is therefore necessary for me to consider who was actually receiving the rent here. I bear in mind that there was no evidence that Livia ever drew money out of the account for her own use (although very limited disclosure of the bank statements was given so I do not attach much weight to this factor). I also bear in mind that, ultimately, when Nesshel was able to open a bank account in the UK, Livia transferred the balance in the account to Neshhel, and was willing for the rent to be paid to him thereafter. I also bear in mind that the evidence was that in 1998, the Council's records showed Livia and a Mr A Ides (which I take to be a reference to Aviel because no one else appeared to fit the description, although his second name is in fact Palmer) as Mr Pace's landlords. It therefore appears that once Aviel became 18, Livia was happy to recognise that he should be treated as a joint landlord. Having heard the evidence, I consider that Livia's intention was always to transfer the Property to Aviel and Nesshel when the time was right. I therefore find that Livia was (and subsequently Livia and Aviel were) acting as Aviel and Nesshel's agent, both in receiving the rent and in claiming to be entitled to the reversion, such that Aviel and Nesshel are to treated as in adverse possession from the outset, despite the fact that the position was not in all respects consistent with an ordinary agency. Nesshel told me, in evidence, that over the course of many discussions Livia told them that she intended the Property for them, but she was protective and wary about what they might do with it and wanted to be able to decide when the time was right for the Property to be transferred; this would not happen automatically when he (as the younger of the 2) turned 18. On that basis, it seems to me that Livia did not intend that Aviel and Nesshel would be able to direct her how to act, or to call for her to transfer the Property to her when they reached their majority: she intended to retain more control than that. Nonetheless, I consider that she was receiving the rent and claiming to be entitled to the reversion on their behalf such that Aviel and Nesshel were in adverse possession from the outset.

35. In reaching this conclusion, I bear in mind that although Livia did not attend, it seems that she is aware of, and supportive of, the Applicants claim herein. As I have already said, she made a witness statement in support of the Applicants' case, in which she stated that she was acting as Aviel and Nesshel's guardian and did not assume or hold out to have any rights in the Property herself. Livia does not assert that she was ever in possession of the Property in her own right, or that she is the person who is now in possession of the Property. As I have already said, Livia did not attend the hearing. There are a number of possible explanations for that, but given the animosity between

the parties, I can well understand that a 69 year old lady might not wish to travel from the Hague to attend. I am not therefore prepared to infer that she did not attend because she did not stand by her written statement. However, I have of course borne in mind that she did not answer questions on her statement.

36. For the reasons set out above, I consider that **Aviel and Neshhel dispossessed Carol Palmer in 1997**. Carol Palmer's right of action therefore accrued in 1997.

Possession of the land after 1997

37. In 1999, Mr Pace moved out. This appears to have been because an acquaintance of Livia's had proposed terms for a tenancy that he did not like.

38. Aviel's evidence was that he secured the Property, retaining a key, and spent some weeks during the summer of both 1999 and 2000 there. He was at this time around 19 or 20. He said that he liased with Powys County Council in relation to the council tax and rates and arranged for the utilities and insurance to be paid. He also indicated that he gave Michael Pace a key to the Property and asked him to look after the Property while he was not around. In my view, although the evidence was slender, I consider Aviel has demonstrated that he was exercising physical control over the Property from 1999 onwards.

39. It was suggested on behalf of the Respondent that Aviel understood at this time that the Property belonged to his mother, and that he intended to act as her agent in securing the Property at this time. Having heard the evidence, I am satisfied that this was not the case. Both Applicants were clear that they had understood from the beginning that their mother was seeking to take ownership of the Property to preserve it for them as the inheritance she felt they were entitled to on the death of their father. There was nothing to suggest that Aviel or Livia intended to change the previous agreement at this time. I therefore find that this was pursuant to the same arrangement by which he and Livia had acted as joint landlords, on behalf of himself and Nesshel. I therefore find that Aviel and Nesshel remained in possession after Michael Pace vacated.

40. During Aviel's visit to Wales in August 2000, he managed to resolve matters with Mr Pace: he persuaded Mr Pace to move back in, on the terms of a written tenancy document he, Aviel, prepared. This recorded that Aviel was the landlord. Aviel says he agreed that the rent should be paid to his mother, since she had a bank account in the UK and he did not. Again, it seems to me that in drawing up the tenancy agreement, Aviel acted on behalf of himself and Nesshel, and that Livia received the rent on behalf of both of Aviel and Nesshel. Aviel and Nesshel remained in possession, as the persons receiving the rent and claiming to be entitled to the Property.

41. Mr Pace remained in occupation of the Property until 2016. Although there were a number of events over the intervening years, the most significant of which I record for completeness below, nothing happened to change the fact that Aviel and Nesshel were

in possession of the Property, via Livia and Aviel, as a result of their receipt of rent from Mr Pace and claim to be entitled to the reversion. The key events in the intervening years are as follows:

a. Livia married the Respondent in October 2000. They remained married until 2013. The Respondent accepted that he had never visited the Property or had anything to do with it. He told me that this was because Livia did not wish him to do so. To my mind this is a strong indicator that, notwithstanding what the Respondent said, Livia did not view the Property as her own, and did indeed consider the Property and any rent arising from it as belonging to Aviel and Nesshel.

b. In 2004, Nesshel turned 18. There was evidence, which I accept, that, in about 2005, there were investigations about whether it would be possible to get the Property put into Aviel and Nesshel's name as the persons entitled on their father's intestacy. It seems that it was about this time that Aviel and Nesshel became aware of Carol Palmer's claim to the Property, and, presumably, learnt that they could not simply claim the Property without establishing either that Carol Palmer had predeceased their father, or that they had been in adverse possession.

c. There was also evidence, which I accept, that at about the same time Aviel attempted to open a UK bank account in his own name, but he was unable to do so. There was therefore a good reason why the rent continued to be paid into Livia's account, so I do not consider that I can infer that it was intended that Livia should be entitled to the rent from the fact that it continued to be paid into an account in her name.

d. Further tenancy documents were drawn up by Aviel showing himself as landlord in 2005 and 2013

e. In 2008-9, Aviel applied to Powys County Council for assistance with installing a borehole at the Property.

f. After Nesshel graduated, he moved to Wales. This was in 2010. His intention appears to have been to come to a place his father (who he had never known) had loved, or at least had a connection with, in order to do as much as he possibly could to ensure that the Property would be safeguarded for himself and his brother. He is based c 40 miles from the Property, though I gather that the roads are not good and it is a difficult journey in winter. He described visiting the property at least once a year, for a couple of days at a time, and doing works of maintenance on the outside of the property, including fixing the windows, replacing slates on the roof, adding insulation, painting, tree work and fencing, and work on the well including the installation of a new pump and a drinking water filter so that Mr Pace would have clean water again. He also installed solar panels and a battery so as to provide a bare minimum of electric power. I formed the impression that Nesshel had taken

on the role of landlord "on the ground", and had resolved to be a good landlord. He had done his very best to ensure that he improved Mr Pace's living conditions, and had invested considerable time and some resources into doing so, off his own bat.

g. Neshell managed to open a bank account in 2012, and the rent was paid into that account from that time onwards. Livia transferred the balance of her English account over to him, and she then closed it.

h. The rent was increased, by a written document in Aviel's name and signed by him in 2013. Nesshel said that he had suggested the rent increase, because of the costs of maintaining the Property, and was there when this was agreed. I also consider it likely that Housing Benefit would not have been paid to Nesshel's account without Aviel's consent, and although there did not appear to be any formal accounting done, it seems that Nesshel spent the rent on the upkeep of the Property. I therefore consider that Aviel was acting on behalf of himself and Nesshel in drawing up the tenancy documents, and the rent was paid to Nesshel's account on behalf of Aviel and Nesshel.

42. Michael Pace left finally in 2016. Since then no one has inhabited the Property, because it is dangerous. Neshhel put a better lock on the Property when Mr Pace moved out, and holds the key, though he said that Aviel could always ask him for it. After a one year exemption, Nesshel took on liability for Council tax at the Property. He told me, and I accept, he spent about a week there last year doing maintenance on the Property, but that lack of funds has prevented him from doing more. In my view, Nesshel's acts are sufficient to have amounted to physical control over the Property, and he continued to act on behalf of himself and Aviel, such that he and Aviel remain in possession at the date hereof.

43. It is also necessary to show that the person in possession from time to time was not in possession with the consent of Carol Palmer. It was not suggested that Carol Palmer had consented to Livia or the Applicants taking control of the Property.

44. It follows that, in my view:

(i) **The Property did not cease to be in adverse possession after 1997.** Aviel and Nesshel were in adverse possession of the Property at all times.
(ii) **The Applicants are now in possession of the Property.**

45. In my view, the Applicants probably barred Carol Palmer's title in 2009. It was certainly barred by 2012, following 12 years' continuous occupation by Mr Pace under tenancies granted by Aviel.

Is there anyone with a better title than the Applicants?

46. Given that the paper title owner, Carol Palmer's, title is barred, for the reasons I have explained above, the only person who could possibly claim to have a better title than the Applicants is Livia (and/or a person claiming through her, such as the Respondent).

47. I have already set out my reasons for concluding that Livia was never in possession on her own behalf, and accordingly she did not ever herself acquire a possessory title. However, even if I were wrong about that, Livia (and those claiming through her) would be estopped from asserting a title superior to that of the Applicants because on a number of occasions she told them that she was acting on their behalf in her dealings with the Property. It seems to me that the Applicants relied on these assurances, in giving up their time and resources to working on the Property, liaising with Mr Pace and others, and so on. Indeed, Nesshel told me one of the reasons he had chosen the trade he had (a carpenter) was because he expected to be able to do up the Property eventually.

The Dutch judgment

48. The final matter I must consider is whether there is anything in the Netherlands judgment which affects the outcome of this reference.

49. The Court in the Netherlands purported to decide that the Property was owned by Livia, as at April 2015. Does this require me to find that it was Livia who was in adverse possession and not the Applicants?

50. I do not consider that it does, for 2 reasons. First, the Dutch Court had no jurisdiction to make a determination *in rem* about the Property: Brussells Convention article 24(1). All that it could do was make an order *in personam* against Livia requiring her to sell the Property and share the proceeds with the Respondent. Accordingly, the Dutch Court order cannot preclude me from finding that Livia does not in fact own the Property.

51. Secondly, I was referred to *Nouvion v Freeman (1899) 15 App Cas 1* in support of the Respondent's argument that the findings made by the Court in the Netherlands are conclusive. In that case, the question was whether a judgment for a debt made in another country could be enforced in the Courts of England and Wales. The House of Lords made it clear that this result would only follow if the judgment was final and conclusive **so as to make it res judicata between the parties** (see esp at 9 and 15). The Applicants were not parties to the proceedings in the Netherlands, so I do not see how they could be bound by the judgment. The Respondent did not refer me to any authority for the proposition that someone who was not a party to foreign proceedings was barred from challenging the result of those proceedings in this country (assuming that the subject matter of the proceedings was within the jurisdiction of the Courts and Tribunals of this country). Accordingly, I do not consider that I should dismiss the Applicants' claim on the basis of a judgment in proceedings to which they were not a party and in which their claim to have been in adverse possession was not adjudicated.

52. The Respondent suggests that a second question then arises, namely whether the Applicants take subject to the Respondent's interest in the Property arising from the Dutch order. Strictly, I do not believe that this matter is before me. However, in case I am wrong about that, I make the following determinations:

    (1) As I have already said, the Dutch order cannot in my view give rise to an *in rem* interest in the Property.
    (2) Even if it could, the Applicants' possession began, as I have found, in 1997, before the Respondent was married to Livia, let alone before the Order was made. The Applicants are entitled to take free of any interest which did not exist at the date their possession commenced: *Jourdan & Radley-Gardner at 15-06 – 15-10.*
    (3) The Respondent takes through Livia, and, as I have indicated above, I consider that Livia is estopped from asserting a better title than the Applicants. The Respondent is bound by that estoppel because he was not a bona fide purchaser of a legal estate for value without notice: he cannot assert his interest deriving from her title against the Applicants either.

53. I will therefore order that the Registrar should give effect to the Applicants' application dated 9 September 2016 as if the Respondent's objection had not been made.

54. Although the Applicants appeared before me in person at the hearing, they have incurred legal costs via solicitors who previously acted for them. The normal order is that the unsuccessful party should pay the costs of the successful party, but the Respondent must have an opportunity to make submissions about costs. I have therefore given further directions about costs in the order.

Judge Tozer

Dated this day of 4th day of December 2018

Stephanie Tozer

BY ORDER OF THE TRIBUNAL