



[2018] UKFTT 0614 (PC)

REF/2017/0960

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

**LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**(1) MARTYN EDWARD CROOKES  
(2) SUSAN CROOKES**

**APPLICANTS**

**and**

**(1) STUART SINGER  
(2) HANNAH AMI SINGER  
(3) BRADLEY OLIVER SINGER**

**RESPONDENTS**

**Property Address: Garage adjacent to Mere Close, Calverton, Nottingham  
Title Number: NT525691**

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

**Sitting at: Nottingham Justice Centre  
On: Wednesday 8 August 2018**

---

**ORDER**

---

UPON hearing the Applicants and the Respondents not attending

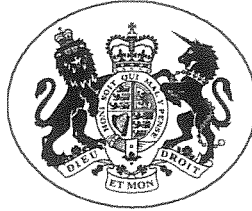
IT IS ORDERED that the Chief Land Registrar shall cancel the application made by the Applicants dated 22 November 2016 for registration of title by adverse possession.

Dated this 3<sup>rd</sup> day of September 2018

*Roger Cohen*

BY ORDER OF THE TRIBUNAL





[2018] UKFTT 0614 (PC)

REF/2017/0960

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

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

**BETWEEN**

**(1) MARTYN EDWARD CROOKES  
(2) SUSAN CROOKES                      APPLICANTS**

**and**

**(1) STUART SINGER  
(2) HANNAH AMI SINGER  
(3) BRADLEY OLIVER SINGER        RESPONDENTS**

**Property Address: Garage adjacent to Mere Close, Calverton, Nottingham  
Title Number: NT525691**

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

**Sitting at: Nottingham Justice Centre  
On: Wednesday 8 August 2018**

The Applicants appeared in person

The Respondents did not appear and were not represented

---

**DECISION**

---

*Adverse possession-Respondents were the owners of the paper title of lock-up garages including one to which Applicants claimed title by adverse possession - evaluation of evidence as to possession and intention- Purbrick v Hackney LB followed - issues as to physical possession and intention to possess .*

**The following authorities are referred to in the decision:**

*Port of London Authority v Mendoza* [2017] UKUT 146 (TCC)

*Powell v McFarlane* (1977) 38 P & CR 452

*Purbrick v Hackney London Borough* [2004] 1 P&CR 34

*Timothy Fowles v Heathrow Airport Limited* [2008] EWHC 219 (Ch)

***Introduction***

- 1 The Respondents are the registered proprietors of the freehold title to land in Calverton, Nottingham which comprises a number of garages. The Applicants, Mr and Mrs Crookes, (“the **Crookes**”) applied to be registered as the proprietors of the freehold title to one of those garages by reason of adverse possession. The Respondents, (“the **Singers**”) objected to that application which was, on 11 October 2017, referred by HM Land Registry to this Tribunal for determination.
- 2 The issue is whether, on the facts, the claim by the Applicants to title by adverse possession is proven.
- 3 Directions had been made to provide for the service of statements of case and witness statements to define the issues and set out the evidence each party wished to tender. Both Applicants and the Respondents filed statements of case to supplement the materials they had submitted to HM Land Registry.
- 4 On Friday 3 August 2018, the Singers had informed the Tribunal that they were unable to attend the hearing. In the course of email communications with the Tribunal, copied to the Crookes, the Singers said that for a variety of reasons none of them would attend and neither would they be represented. I informed the parties that I would examine the Crookes and reserve my decision. This decision is that reserved decision.

5 The hearing of the reference took place on Wednesday 8 August 2018. None of the Singers appeared, nor were they represented. Both the Crookes attended the hearing. Mr Crookes was sworn and answered questions I asked by of examination. I was mindful that this should not be an opportunity for the Crookes to introduce new evidence that ought to be have been presented in writing as directed prior to the hearing. Rather my questions were intended to clarify the evidence where clarification was needed.

6 Mr Crookes (who told me that he had practised as a land surveyor) gave the impression of wishing to get his point across in the course of answering questions, whether or not his point was an answer to the specific question.

7 During Mr Crookes' examination, Mrs Crookes from time to time indicated her assent to what Mr Crookes had to say in answer to my questions. I gave Mrs Crookes the opportunity to be sworn to add to what Mr Crookes had to say but she declined on the basis that she had nothing to add.

#### **The documents**

8 From the documents I find the following.

9 On 2 June 1988 the freehold title to land on the east side of Labray Road and land at Broom Close, Calverton, Nottingham was registered at HM Land Registry under title number NT518552. The land in that title includes the garage which is the subject of this reference.

10 On 14 January 2016 all the land in that title was transferred from Leicester Housing Association to Stuart Singer who was on 9 February 2016 registered as the proprietor. All 3 of the Singers are now the joint registered proprietors.

11 On 22 November 2016, the Crookes applied to HM Land Registry in form ADV1 dated 16 November 2016 to be registered as the proprietor of one of the garages included in title NT 518552, by reason of adverse possession. HM Land Registry assigned title number NT 525691 to the land the subject of the application on which the garage ("**the Garage**") stood. The

Application was made pursuant to Schedule 6 of the Land Registration Act 2002.

12 The Garage was a single lock up garage adjacent to 10 Mere Close, Calverton. This was the southernmost of 2 garages in a single block accessed from Mere Avenue and having Mere Close to the rear.

13 On 14 July 2017 the Singers objected by form NAP dated 11 July 2017. Paragraph 3 of Schedule 6 gave the Singers the right to require that the application be dealt with under paragraph 5 of that Schedule. The Singers did not so require and accordingly the issue for me to decide is whether or not Mr and Mrs Crookes have proved that they have been in adverse possession of the garage in question for the period of 10 years ending on 22 November 2016.

14 In a joint statement of case verified by a statement of truth signed by each of them, the Singers said that after the purchase of the garages, they sent an operative to the site but no response was received in relation to the Garage. At no time whilst the Singers' staff were working at the site did the Crookes enter the Garage or attempt to use it. The Crookes would have known that the Singers owned the Garage because they had rented another garage known as Garage 3 Mere Avenue from the Singers. The tenancy agreement dated 1 February 2016 was produced.

15 The evidence for the Crookes comprised the relevant documents they filed in advance of the hearing, the oral evidence of Mr Crookes and a letter by Ms Clarkson who resides in Mere Avenue. Ms Clarkson did not attend to give oral evidence. Her letter was neither a witness statement nor was it verified by a statement of truth. In oral evidence, Mr Crookes informed me that Ms Clarkson was his sister in law. In those circumstances, I have placed no weight on that letter and have disregarded its contents in making my findings of fact.

16 As I will explain, the Crookes have to show that they possessed the Garage with the intention to become the owners of it.

- 17 In approaching their evidence, both written and oral, I bear in mind the guidance from Slade J in *Powell v McFarlane* at p 476 who said this:  
“Though past or present declarations as to his intentions, made by a person claiming that he had possession of land on a particular date, may provide compelling evidence that he did *not* have the requisite *animus possidendi*, in my judgment statements made by such a person, on giving oral evidence in court, to the effect that at a particular time he intended to take exclusive possession of the land, are of very little evidential value, because they are obviously easily capable of being merely self-serving, while at the same time they may be very difficult for the paper owner positively to refute. ... As Sachs LJ said in *Tecbild v Chamberlain* ' In general, intent has to be inferred from the acts themselves.”
- 18 In *Port of London Authority v Mendoza* Judge Elizabeth Cooke said at [25]  
“I take this to mean that the evidence of the adverse possessor by itself is unlikely to support a finding of intention to possess in the absence of anything else. Intention to possess is often demonstrated by the factual possession and, as I said above, where that possession takes the form of fencing a field or similar, the message to the world is clear.”
- 19 In *Timothy Fowles v Heathrow Airport Limited* Lewison J did not limit the caution to the evidence of intent when he said at [107]  
“In claims to have acquired title by adverse possession the court must be especially wary of self-serving evidence given by the claimant.”
- 20 On 16 November 2016 the Crookes signed a statement made in support of the application to register title by adverse possession in which they said the following:  
“We have occupied the garage since July 2000 until present day.  
We have maintained the garage and have stored trailers, cycles and motorcycles, garden furniture and other sundry items in that time.  
The land is enclosed by 3 brick walls a corrugated roof and locked wooden doors. The lock and key are owned by us. We have had no contact with the freeholder/owner as we have not been able to establish who it is.  
We believe that the facts and matters contained in this statement are true.”

- 21 The written evidence of Mr and Mrs Crookes was that in or around July 2000 they occupied the Garage which was then empty and abandoned. In around July 2004, the Garage suffered damage from joyriders. Before repairing the damage, the Crookes wanted to establish that the Garage definitely did not belong to the Leicester Housing Association. The Crooks understood the Association to say that it did not own the Garage. The Crookes stated that they repaired the damage caused by the joyriders. The Crookes made enquiries of HM Land Registry as to the ownership of the properties on either side of the Garage to ensure that Leicester Housing Association did not own it. There was no documentary evidence to confirm what enquiries had been made. In September 2017, having scraped off some paint, one could see a “No 9” on the garage which had been painted over.
- 22 In his oral evidence, Mr Crookes said that in 2000 he and Mrs Crookes lived about half a mile from the Subject Garage. From 2002, when they moved, they lived about a mile away. They occupied the Garage in 2000, so 18 years ago. He embarked on a search to find out who owned it. Three photographs showing or purporting to show the repairs were taken about a year ago by Mr Crookes. These three photographs suggested that some bricks had been replaced at some time but they provided no clue as to when that might have been.
- 23 The Crookes referred to 2 photographs taken about 8 months before the hearing in relation to the “No 9”. The one photograph shows a number 9 above the lintel on, what Mr Crookes told me, was the entrance to the Garage. The photograph also showed a padlock (in the open position). The other photograph showed a 3 pin plug socket affixed on what I was told was an interior wall of the Garage with the cable running from the socket out over the top of the wall.
- 24 Mr Crookes told me that the doors to the Garage were made by him after the Garage was damaged by the car driven by joy-riders.

25 I referred Mr Crookes to his August 2017 response to the notice of objection by the Singers to the application to the HM Land Registry in which Mr and Mrs Crookes wrote as follows:

“We began this process in order to establish ownership of this garage as we wanted to make improvements to it i.e. repair the roof and replace the doors.”

Mr Crookes told me that by “the process” he meant that, in general terms, everyone knew he was in the Garage and in the process he was getting the deeds from the neighbouring houses, for which purpose he got in touch with the Land Registry. This began with enquiries in 2016. Mr Crookes said his enquiries showed that the properties on either side of the block containing the Garage are or were owned by the National Coal Board and the garage next to the Garage belongs to the owner of 10 Mere Avenue. Again, no documents have been produced to confirm what enquiries were made.

26 Starting in 2004, Mr Crookes said, his brother, Paul had made enquiries by telephone of Leicester Housing Association of their ownership of the Garage. At the time, Mr Crookes rented the garages known as 11, 13 and 15 Mere Avenue for keeping motorbikes and cars. He did not made enquiries in writing. The reason for making the enquiry was that, following the material damage, it would be cheap to rebuild the wall but he was concerned as to whose benefit the rebuilding would be for. If the Garage belonged to the Leicester Housing Association, they should fix it. At some point, Leicester Housing Association said that the Garage did not belong to them. If Leicester Housing Association had said they owned the Garage, Mr Crookes would have removed his property and left the Association to perform the repairs.

27 Mr Crookes told me that in July 2000 he noticed that the Garage was empty and abandoned. He put a lock on it. He did not know for how long it had been empty. He assumed someone had moved out. He kept a push bike or motor bike in the Garage. After the doors were smashed, he put either 2 bicycles or later a trailer or push bike or a car in the Garage. He would visit



once a week, if that. It is a handy property, looked over by 6 houses. Mr Crookes has keys as does his nephew, Luke.

28 A good few years ago, the Crookes bought a publication about claiming adverse possession. They read that 12 years occupation could lead to title. They decided to keep quiet about their occupation and wait 12 years.

29 Mr Crookes did not keep records because he did not need to. Without paying rent and applying some creosote he could achieve “a freebie”. On reflection he first thought about title in 2008. Mr Crookes accepted that if his case was factually correct, he could have applied for title in 2013/14. I asked for his explanation for the delay. Mr Crookes said that when the Singers took over it was time to get things rolling. It had never crossed his mind to apply earlier.

30 In my examination, I asked Mr Crookes why he had inquired of the Land Registry about the ownership of land near the Garage but not the ownership of the Garage itself. Mr Crookes said he had asked and had got back only the plan used by the agents when NT 518552 was offered for sale in 2015. He denied having seen the official plan for that title.

### **The law**

31 Like Judge Cooke in *Mendoza*, I can summarise the law very briefly as it is not in dispute. Indeed, I adopt Judge Cooke’s summary, making the changes necessary for the set of facts now in question.

32 In order to succeed, the Crookes must establish that by the date on which they applied to register their alleged title, 22 November 2016, they had for ten years been in adverse possession of the land they claimed.

33 Adverse possession has two ingredients: factual possession (what the squatter did), and the intention to possess (what the squatter intended).

34 So far as factual possession is concerned, the words of Slade J in *Powell v McFarlane* at 470 set out what is required:

“Factual possession signifies an appropriate degree of physical control. It must be a single and exclusive control. 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.”

35 As to the intention to possess (referred to in the older cases in Latin as the *animus possidendi*), Slade J said in *Powell v McFarlane* at pp 471-2 that what is meant is:

“... the intention, in one's own name and on one's own behalf, to exclude the world at large, including the owner with paper title if he be not himself the possessor, so far as is reasonably practicable...”

36 In many cases, intention is not a big issue once factual possession has been established. The squatter who fences a field and locks the gate is obviously intending to keep people out. This case concerns not a locked field but a structure capable of being locked up in an urban setting.

37 *Purbrick v Hackney London Borough* is a case of a structure, capable of being locked, in an urban setting. In *Purbrick*, a building which was the subject of the proceedings stood in a corner of the site. It was “a burnt out shell” some 4m wide, 6m long and 4m high. It had a doorway, but no door, and rubbish had been dumped inside. The roof had collapsed or had disappeared. In 1988 P, a builder, cleared the rubbish and began to store ladders and other equipment in the building. He put a sheet of corrugated iron across the doorway, securing it with a chain and two padlocks. P had been reluctant to carry out further work in case anyone had tried to stop him using the building. He also wanted to keep a low profile in case the owner saw him. In 1992, however, P installed a proper door and restored the first floor. Thereafter, P remained in occupation. Neuberger J held that P had acquired the property by adverse possession. The natural inference to be drawn was that between 1988 and 1992 P intended to possess the building. he did what he could, without carrying out substantial improvements to the building, which were carried out in 1992, to maintain possession by substantially, exclusively being in physical occupation and by placing a

makeshift door with two locks on it, thereby excluding anyone else from gaining access other than by using a ladder to get over the four metre wall. P had had full and real occupation of the property and the nature of the occupation was unequivocally consistent with possession. Further, the fact that P was aware that he was liable to be dispossessed as a right did not prevent him being in possession. It was also to some extent implicit in the law of adverse possession that an owner who makes no use of the property should be expected to keep an eye on it to ensure that adverse possession rights are not being established.

### **Findings of fact**

38 Against that legal background, I now consider my findings of fact relevant to the issues.

### **Factual possession**

39 What findings can I make as to the use made of the Garage by the Crookes? I have looked for evidence as to what use there was and when. In relation to these issues Lewison J would caution about accepting self-serving evidence from Mr and Mrs Crookes. However, the fact is that despite what Mr Crookes said in oral evidence and Mr and Mrs Crookes stated in their statement of case and letter to HM Land Registry about when they occupied the Garage, what they stored in the garage, when it sustained material damage and what they did to repair that damage there is no document, receipt, photograph or other item of evidence to confirm what the Crookes have asserted.

40 The photographs that have been provided are of limited use. Only one photograph shows the interior of the garage in a way that enables observation of what is stored within. That photograph shows a pushbike covered by some fabric, a wheel, a tea chest or similar and other unidentified items. That photograph is about one year old. The items stored in the Garage changed, according to Mr Crookes from time to time. So I am reluctant to rely on one photograph taken after the application to HM Land Registry had been made to confirm storage use over either over the 10 years

from November 2006 to November 2016 or (as was asserted) all the way back to 2000.

41 There was one disconcerting feature of the Crookes' evidence. The letter by Ms Clarkson, which for reasons given above I have not taken into account, was presented as a piece of independent evidence from a local resident. It was only in the course of my examination of Mr Crookes that it emerged that she was a relative.

42 Mr Crookes' evidence was that the Garage would be visited once a week, if that. Is that use consistent with ownership? In my judgment, it might be. An owner may use a garage for storage of items that rarely need to be visited; for example furniture stored during the rebuilding of the premises where it is used, or camping equipment that is required only during holidays. However, the dearth of evidence as to what was stored coupled with the lack of detail as to when the Garage was visited does not give me confidence in accepting uncritically the evidence I have read and heard.

43 The evidence of occupation of the Garage is sparse but such as it is suggests a level of occupation which was minimal rather than substantial.

44 Further (although this was not explored at the hearing), it seems from the plans that the number of garages in Mere Close is similar to the number of houses in Mere Close, Mere Avenue and Crookdole Lane and so are more likely to be visited by householders on a frequent basis than say a garage in a block of self-contained lock up garages.

45 Accordingly, I am not satisfied that the evidence supports a finding that Mr and Mrs Crookes were in factual possession of the Garage for the relevant period.

### **Intention to possess**

46 If I had found that the Crookes were in factual possession for the requisite period of time, did they have the intention to exclude the true owner?

47 I remind myself of the dangers of self-serving statements of intent and the need to infer intention from the acts of the squatter. An example of the proper approach to inferring intention from the acts of the squatter is found in *Purbrick* where Neuberger J said at [18]

“To say that the Council was in possession of the building, when someone else had installed his equipment, had locked it so that nobody could obtain access, other than by putting a ladder up against the wall and climbing over the top of a 4 metre wall, appears to me, at least on the face of it, and subject to any special rule or principle to the contrary, to flout common sense and reality.”

48 I find as a fact that there came a time at which the Crookes had secured the Garage so that only they or a key holder authorised by them could obtain access. That finding is based on the following:

- (a) The photographic evidence, albeit recent, of a padlock;
- (b) The absence of a response to the approach by the Singers’ representative; and
- (c) The evidence of Mr Crookes that the Garage was locked.

49 I am not however satisfied that I can infer an intention to exclude the true owner as early as November 2006.

50 The concern described by Mr Crookes to identify the rightful owner of the Garage leaves me in some doubt as to what the Crookes had in mind. They telephoned Leicester Housing Association to ask if the Association owned the Garage and were told, according to Mr Crookes, that they did not. The enquiry was not made in writing. This is an enquiry which, if it was to be made and considered with due care ought to have been made in writing so that the Association could be clear about which garage was of interest. Nor did the Crookes produce the results of any enquiries they made at HM Land Registry. From the freehold title NT518552 it is a reasonable inference that had the Crookes searched the index map at HM Land Registry at any time from 2000, when they say they first became aware of the empty and abandoned garage, the identity of the owner would have been identifiable.

51 I take into account also that no reasonable explanation was given for the delay in applying to register the title by adverse possession once 10 years had accrued as on the Crookes' case it would have done by 2014 or even 2010.

52 The inference I draw is that there was a time at which the Crookes were interested in finding out if the paper owner would repair the damage. However, it was only at a later point in time and possibly after the Singers purchased the freehold of title NT 518552 that the opportunity to secure "a freebie" presented itself to the Crookes.

53 In coming to this conclusion, I have in mind the guidance of Neuberger J in my paragraph 47 above. However, I am not satisfied that the Crookes had the relevant intention to possess as far back as 2006. Accordingly, the second part of the test for adverse possession is like the first, not satisfied.

### **Conclusion**

Accordingly, I determine and will so order that the Chief land Registrar do cancel the Applicants' application dated 22 November 2016 to be registered as proprietors of title no NT 525691 by adverse possession.

### **Costs**

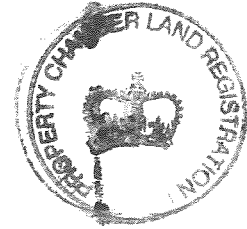
54 Subject to any submissions made within seven days from the date on which this decision is issued, to the contrary, I order that the Applicants pay the Respondents costs of the reference to be assessed on the standard basis. If

the amount of costs is not agreed within 14 days either party may apply for further directions as to assessment.

**Dated this 3<sup>rd</sup> day of September 2018**

**BY ORDER OF THE TRIBUNAL**

*Roger Cohen*



**Roger Cohen sitting as a Tribunal Judge**