

[2019] UKFTT 0627 (PC)

REF/ 2017/0873

PROPERTY CHAMBER, LAND REGISTRATION DIVISION  
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

ZIA UR REHMAN KHAN

APPLICANT

and

ACCOUNTINGTAC.CO.UK LIMITED

RESPONDENT

Property Address: 1 Holmesdale Road, Croydon CR0 2LR

Title Number: SGL482665

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ORDER

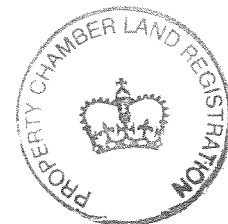
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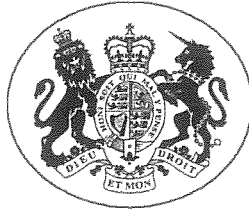
The Tribunal orders that the Chief Land Registrar do give effect to the application of the Applicant, Zia Ur Rehman Khan dated 9<sup>th</sup> May 2017 to alter the register of title number SGL482665 as if the objection of the Respondent thereto had not been made.

Dated this 20<sup>th</sup> September 2019

*Michael Mitchell*

BY ORDER OF THE TRIBUNAL





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

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

**BETWEEN**

**ZIA UR REHMAN KHAN**

**APPLICANT**

**and**

**ACCOUNTINGTAX.CO.UK LIMITED**

**RESPONDENT**

**Property Address: 1 Holmesdale Road, Croydon CR0 2LR**

**Title Number: SGL482665**

**Before: Judge Michell**

**Sitting at: 10 Alfred Place, London**

**On: 6<sup>th</sup> June 2019**

Applicant Representation: Mr Shrimpton, of Suriya & Co., Solicitors

Respondent Representation: Mr Karamat, lay representative

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**DECISION**

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*APPLICATION TO ALTER REGISTER- NOTE ON PROPERTY REGISTER THAT  
PROPRIETOR CLAIMS A RIGHT OF WAY OVER UNREGISTERED LAND- APPLICATION  
FOR REMOVAL OF THE NOTE AS BEING SUPERFLUOUS*

1. The Respondent, Accountingtax.co.uk Limited (“the Company”) is the registered proprietor of 1 Holmesdale Road, Croydon, registered under title number SGL482665. On 9<sup>th</sup> December 2016 the following entry was made on the property register of the title;  
“The registered proprietor claims that the land has the benefit of a right of way with or without vehicles over the access road leading from the rear of this property to Ely Road. The right claimed is not included in this registration. The claim is supported by a statement of truth made on 8 December 2016 by Carol Karamat”.  
Carol Karamat is a director of the Company. The Applicant, Mr Zia Ur Rehman Khan (“Mr Khan”) is the registered proprietor of neighbouring property, 3 Holmesdale Road. He has claimed to be in possession of the access road from Ely Road to the rear of 1 and 3 Holmesdale Road. He has applied for alteration of the register to title number SGL482665 by the removal of the entry.
  
2. I visited the site accompanied by the parties and their representatives during the afternoon before the start of the hearing. 1 Holmesdale Road lies on the northern side and at the western end of Holmesdale Road, at its junction with Whitehorse Road. 1, 3 and 5 Holmesdale Road form a terrace, with 3 Holmesdale Road on the east side of 1 Holmesdale Road. 1 Holmesdale Road is used as office accommodation with residential accommodation on the upper floors. 3 Holmesdale Road has three storeys and is divided into flats. 5 Holmesdale Road was formerly the site of a public house but the public house has been demolished and a block of flats has been built on the site in recent years. 5 Holmesdale Road is at the junction of Holmesdale Road and Ely Road. An access road leads from Ely Road, between the side of 5 Holmesdale Road and along the boundary with the grounds of a block of flats in Ely Road, to give access to an area of land behind 1 and 3 Holmesdale Road. Part of the open area behind 1 and 3 Holmesdale Road is not within the registered title of either property. Land immediately behind the rear boundary of 1 Holmesdale Road was formerly the site of 2 garages. The only way of accessing these garages would have been from Ely Road over the access road. The site of these garages is now fenced off from 1 Holmesdale Road by a wooden fence along the boundary. There is a tarmacked rear yard forming part of 1 Holmesdale Road. There is a concreted yard forming part of 3 Holmesdale Road. There was formerly a garage or wooden shed standing on land within the registered title of 3 Holmesdale Road. There is a dispute between the parties as to the exact line of the rear boundary of 3 Holmesdale Road. There was at the time of my inspection a single low fence panel on what Mr Khan

says is the line of the boundary. The gap between the end of this fence panel on the boundary with 1 Holmesdale Road and the corner of the fence on the northern boundary of 1 Holmesdale Road is too narrow to allow Ms Karamat to drive her Mercedes motor car into the yard of 1 Holmesdale Road.

3. Mr Khan's application is for the registrar to remove the entry under paragraph 5(d) of Schedule 4 to the Land Registration Act 2002. Mr Khan says that the entry is superfluous because the Company cannot establish that it has a right of way over the access road. The Company's case is that it has acquired a right of way by prescription or under the doctrine of lost modern grant.
4. Mr Khan's representative acknowledged that the legal burden of proof that the Company did not have a good claim to the right of way was on Mr Khan but submitted that there was an evidential burden on the Company to show evidence to support the claim to a right of way.
5. Mr Khan acquired 3 Holmesdale Road in November 2005. He said that when he acquired 3 Holmesdale Road there were garages on the yard area at the back of 1 and 3 Holmesdale Road. The garages were on the land over which the Respondent claims the right to park. These garages were not demolished until ... It was not possible in 2005 to drive over the yard to the rear of 1 Holmesdale Road because the yard was covered with rubbish. The area was not fenced off and was used as a general dumping ground. Mr Khan said that the first thing he did when he bought 1 Holmesdale Road was to clear the rubbish and put up a fence with a gate into the yard from the street. The gate had a lock fitted to it. He had a key and he gave a key to his tenant at 1 Holmesdale Road. Mr Khan said that he did not give a key to Ms Karamat but that once a year, Mrs Karamat would ask to borrow a key from him and he would lend her one. Mr Khan said that Mrs Karamat did not have a key to the gate to keep until 2015.
6. Mr Khan produced an email dated 9<sup>th</sup> June 2014 sent by Ms Karamat to him. The email reads

"I need to get around the back and the weeds are growing really high and on the structure of my property. I need to get my maintenance person to attend to the state of the side of the property and the car-park.  
Please can drop off the keys and leave with my colleagues".

7. Mr Akokinor gave evidence that he occupies the ground floor flat at 1 Holmesdale Road. He has rented that flat from Mr Khan since 20<sup>th</sup> June 2013. He said that he was at the flat daily and lived there. Between 2011 and 2013 he lived in the second floor flat at 1 Holmesdale Road. The second floor flat has a window in its kitchen that overlooks the rear yard. Mr Akokinor's evidence was that the first time he saw Ms Karamat park in the rear yard behind 3 Holmesdale Road was in 2016.
8. Evidence for the Company was given by Ms Carol Karamat. I gave permission for Carol Karamat to give evidence, though the Respondent had not served a witness statement of Ms Karamat. Ms Karamat confirmed the truth of the facts set out in the Respondent's Statement of Case and was cross-examined. The Respondent acquired title to 1 Holmesdale Road in 2006. Mrs Karamat said that she began parking on the yard at the rear of 1 Holmesdale Road in 2006 and so started driving over Mr Khan's land in 2006. Ms Karamat did not accept that Mr Khan had erected a fence and gate. She said that she had no idea who had erected the fence and gate but then said that the developers of the site of a former public house at 7 Holmesdale Road (being on the corner of Holmesdale Road and Ely Road) had given her a key to the gate before Mr Khan gave her a copy. Ms Karamat said that if there had been a gate prior to 2015 then it had not been secured.
9. Cross-examined about her email of 9<sup>th</sup> June 2014, Ms Karamat said that she was not asking Mr Khan for permission to go into the rear yard. She had had a key but had mislaid it.
10. Ms Karamat said that Mr Akokinor does not live at 1 Holmesdale Road. She said that he had split up with his wife in 2017 and has not lived at 1 Holmesdale Road since then. This was not put to Mr Akokinor in cross-examination.
11. The Respondent produced a letter from Mr Martin Davies, a former owner of 1 Holmesdale Road. The letter is dated 29<sup>th</sup> July 2016. It reads as follows  
"Further to our recent telephone conversation, I am writing to confirm that when our firm occupied the premises at 1 Holmesdale Road, Croydon CR0 2LR, we had unrestricted access to the rear of the property, via the alley driveway coming off Ely Road. We used this area as a small car park.  
The situation existed throughout the period of ownership from 1989 through to July 2006".

12. Mr Khan produced an email he sent to Mr Davies on 12<sup>th</sup> April 2017 in which he said that the “access road” was covered with a pile of rubbish when he bought in November 2005, that he erected a fence and gate as soon as he took possession to secure the area from people using it as a rubbish dump and that the pile of rubbish remained until he started development work in September 2006. He asked Mr Davies to clarify how he managed to park a car between November 2005 and July 2006 when rubbish was still piled on the access road. No letter in reply was produced and Mr Khan said he did not receive any reply.
13. Mr Davies was not called to give oral evidence and for his evidence to be tested by cross-examination.
14. At the date of entry on the property register of the note of the claim by the Respondent to a right of way over “the access road”, Ms Karamat had according to her own evidence been driving over the access road for only 10 years. To establish an easement by prescription, the Respondent must show user for at least 20 years. As Mr Davies was not called to give oral evidence, it would not be right to place weight on the contents of his letter, particularly where it is contradicted by Mr Khan’s evidence as to the state of the access road in 2005/2006. The Respondent has not shown evidence of user for at least 20 years. In those circumstances, I consider that the entry on the register of the note of the Respondent’s claim to a right of way is superfluous and should be removed.
15. It is not strictly necessary for me to decide whether Ms Karamat has been crossing the access road in a car and parking at the rear of her property since 2006 as she claims. However, if it were necessary, I would decide that she did not drive over the access road on a regular basis (if at all) until 2015. Her evidence was contrary to the evidence of Mr Khan and of Mr Akokinor. Mr Akokinor has no obvious interest in the outcome of the proceedings and no obvious reason not to tell the truth. The email Ms Karamat sent in 9<sup>th</sup> June 2014 is consistent with Mr Khan’s evidence that Ms Karamat did not have a key until 2015. The terms of the letter are not such as one would expect to be written by someone who had a key and had mislaid it. It is apparent from the letter that Ms Karamat considered she needed to explain to Mr Khan why she needed a key. She would not have written in such terms if she was regularly using the rear access to access a parking space and had simply lost a key.

16. I shall direct the Chief Land Registrar to give effect to the application of the Applicant.

17. My preliminary view is that the Respondent should pay the Applicant's costs of the proceedings. The Applicant has succeeded. The usual practice when the Tribunal makes an order for costs is to order that the losing party pay the costs of the winning party. I am not aware of any reason why that practice should not be followed in this case. If any party wishes to submit that some different order should be made as to costs, they should file written submissions with the Tribunal and serve the same on the other party by 5pm on 30<sup>th</sup> September 2019.

DATED this 20<sup>th</sup> September 2019

*Michael Michell*

BY ORDER OF THE TRIBUNAL

