

[2019] UKFTT 0752 (PC)

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2019/0019
BETWEEN

PETER ANTHONY TEAH
MARIE DANUTE TEAH

Applicants

and

SARAH JANE REES
BOBBY CHARLES REES

Respondents

Property: Land at 22 Adamswood Close, Market Harborough

Title number: LT502705

ORDER

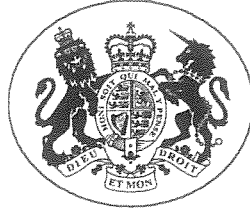
The Chief Land Registrar is ordered to give effect to the application dated 21 June 2018

BY ORDER OF THE TRIBUNAL

Ann McAllister



Dated this 3rd day of December 2019



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BETWEEN**

**PETER ANTHONY TEAH
MARIA DANUTE TEAH**

Applicants

and

**SARAH JANE REES
BOBBY CHARLES REES**

Respondents

Property: Land at 21 Adamswood Close, Market Harborough

Title number: LT502706

**Before: Judge McAllister
Leicester Tribunal
14 November 2019**

Both parties appeared in person

DECISION

Introduction

1. This is a dispute between neighbours as to the ownership of a strip of land, measuring no more than 1 metre, between their properties. The Applicants, Mr and Mrs Teah, are the registered owners of 21 Adamswood Close, Market Harborough ('No 21'). The

Respondents, Mr and Mrs Rees, are the registered owners of 22 Adamswood Close ('No 22').

2. Nos 21 and 22 are part of a development built by Barratt Northampton Limited in the mid 1990s. Mr and Mrs Teah purchased No 21 from the developers by a transfer dated 24 February 1995. They were, as I understand it, the first residents on the estate. Mr and Mrs Rees purchased No 22 on 21 January 2016 from Paul and Julie Craddock who had purchased No 22 from Barratt on 29 September 1995. ('the 1995 Transfer')
3. I have not seen the transfer to Mr and Mrs Teah, but the plan to the 1995 Transfer shows the boundary between the properties running in a straight line from the back of the properties to the estate road at the front. The boundary is drawn along the outside of the building of No 21, leaving a passageway between the wall of No 22 and the boundary which allows access to the back garden.
4. The title plans to No 21 and No 22 shows the boundary veering slightly to the north west. It is not clear why this is the case. The title plans, in any event, show no more than general boundaries. But even on the title plans the boundary is correctly drawn as running along the wall of No 21. No 21 has a passageway on the eastern side, between No 21 and No 20.
5. To the front of No 22 is a driveway. The disputed land is, in effect, the continuation of the accessway way from the edge of the garage at No 22 towards the road, stopping approximately a metre from the edge of the road. This area is currently divided from No 21 by a wicker fence erected in July 2018 by Mr Teah when the dispute arose.
6. The disputed land is bounded by concrete kerb stones forming part of the drive of No 22. Prior to the erection of the wicker fence, as set out in more detail below, the disputed area to all intents and purposes formed part of the front garden of No 21.
7. By an application dated 21 June 2018 Mr and Mrs Teah applied under section 97 and paragraph 1 of Schedule 6 to the Land Registration Act 2002 ('the 2002 Act') to be registered as owners of the disputed land, claiming adverse possession of the same. Mr and Mrs Rees objected, requiring the application to be dealt with under paragraph 5(4) of Schedule 6 to the 2002 Act.
8. Mr and Mrs Teah maintain that they have met the third condition in this sub paragraph, namely that (a) the disputed land is adjacent to their land (b) the exact line of the boundary has not been determined under section 60 of the 2002 Act (c) for at least 10 years of the period of adverse possession ending on the date of the application, they reasonably believed that the disputed land belonged to them and (d)

the disputed land was registered more than one year prior to the date of the application.

9. The matter was referred to the Tribunal on 3 January 2019. I had the benefit of a site view on 13 November 2019.
10. For the reasons set out below I will order the Chief Land Registrar to give effect to the application. I am satisfied that Mr and Mrs Teah have acquired the land by adverse possession.

Background and evidence

11. Mr Teah gave evidence on behalf of himself and his wife. His case, simply put, is that the disputed land has always formed part of the garden of No 21. It was originally laid to turf by the developers, and was maintained, and when necessary re-turfed, by them. In the early 2000s the garden of No 21 was redesigned and the disputed land was planted with shrubs, a conifer and bamboo, all of which were trimmed and maintained as necessary. The ground was covered in gravel. There has never been any physical demarcation between the disputed land and the remainder of the garden of No 21. It is their case, therefore, that for the last 23 years the disputed land has been exclusively occupied by them.
12. Mr Teah stated that he never gave any thought to the position of the boundary until the present dispute. The claim that the disputed land belonged to No 22 came, as he put it, 'as a bolt out of the blue'.
13. As stated above, the previous owners of No 22 were Mr and Mrs Craddock, who had lived there for some 21 years before they sold their property to Mr and Mrs Rees. It is Mr and Mrs Teah's case that no permission was ever given to them by Mr and Mrs Craddock to use or occupy the disputed land. The disputed land was used exclusively by Mr and Mrs Teah.
14. I have seen an email from Mr Craddock, who was not able to attend the hearing, dated 6 October 2018 and an undated letter signed by him. In his email he says this: *'It concerns me that the neighbour Mr P Teah is making a claim for adverse possession of a small strip of land to the front of the property. He also makes a false claim that we never laid claim to the area, however we purchased the property as per the title plan edged red so we would never have needed to apply as we clearly purchase [sic] this when the house was built in 1995. In our time residing at the house we have not*

given permission to or witnessed maintenance of this area from our side of the boundary and believe Mr Teah to be making a false statement of truth. ‘ The email finishes by making the point that if the disputed land was to be transferred to Mr and Mrs Teah the access to the back garden would be obstructed.

15. The undated letter from Mr Craddock repeats that no permission was ever given to Mr and Mrs Teah to ‘ work the disputed land’ and that he maintained the land, and never saw any maintenance by Mr Teah.
16. Mr Teah’s stated that Mr and Mrs Craddock never carried out any work of maintenance to the disputed land. Their house and garden were poorly maintained. In so far as the letters from Mr Craddock state that Mr and Mrs Teah did not maintain or use the disputed land, they are simply incorrect.
17. Mr Teah relied on a number of photographs, showing, first the disputed land laid to lawn, and more recently covered in gravel, and planted with shrubs and the conifer.
18. The dispute arose, on Mr Teah’s evidence, when the tenants living at No 22 dug up some bushes on the disputed land in order to erect a 3 metre bin store.
19. Mr and Mrs Rees’ case is that, when they bought No 22, there was no indication of any boundary issue or dispute. They understood that their property extended in a straight line with the outer edge of the rear passageway. They contacted Mr Craddock, as stated above, who appeared confused and perplexed that any claim was being made by Mr and Mrs Teah. It was also their evidence that since they purchased in January 2016 they were not aware of any maintenance or activity by Mr and Mrs Teah on the disputed land. The property was purchased as an investment, and has been tenanted since the date of the purchase. Mr Rees’ brother and sister in law are now the tenants. Mr and Mrs Rees agreed to sell the property to them, but the sale has been delayed because of the present dispute. It was they who wanted to create a bin store, and to widen the drive. It is also their case that Mr Rees’ brother cut back the bushes, and stripped back the bamboo and confiner.
20. Mr and Mrs Rees also made the point that if Mr and Mrs Teah’s application is successful their access to the back of their property will be compromised, and they will not be able to widen the drive as they plan to do.

Relevant legal principles

21. The general legal principles which apply when a court or tribunal is asked to determine whether a person has obtained title to land by adverse possession were considered and re-stated in *JA Pye (Oxford) Ltd v Graham* [2003] 1 AC 419 and more recently in *Balevents Ltd v Sartori* [2014] EWHC 1164 where, for present purposes, they can be summarised as follows:

- (1) There is a presumption that a person with paper title to the land is in possession of the land.
- (2) If someone else wants to show that he or she is in possession of the land, the burden is on them to show factual possession of the land and the requisite intention to possess.
- (3) To establish factual possession it is necessary to show that the person claiming possession has the appropriate degree of physical control of the land, that his is occupation exclusive and that he has dealt with the land as an occupying owner might have been expected to deal with it and that no-one else has done so.
- (4) Whether or not person has taken sufficient control of the land is a matter of fact, depending on all the circumstances, including, in particular, the manner in which the land is commonly enjoyed.
- (5) The person seeking to show possession must also show that he had the intention for the time being to possess the land to the exclusion of all others: the intention is to possess, not to own.

22. It is important to note that two separate statutory regimes apply to the acquisition of land by adverse possession, depending on whether or not possession was obtained prior to the coming into force of the 2002 Act (13 October 2003). Until that date, the relevant legislation was set out in the Limitation Act 1980. In essence, before 2013, a person seeking title by adverse possession had to show that he had been in possession, in the sense set out above, for a period of 12 years.

23. After the coming into force of the 2002 Act, a different regime applies. However, paragraph 18 of Schedule 12 to the Act provides that if a person had been in possession for a period of 12 years before the coming into force of the Act, then he is entitled to be registered as the proprietor of the estate. This is a transitional provision

designed to ensure that if adverse possession had been obtained by 13 October 2003 the new Act would not prejudice that acquired right.

24. This is perhaps an obvious point, but the fact that the land is registered in the name of someone else does not prevent a person from claiming possession either under the 1980 Act or the 2002 Act.
25. Under paragraph 1 of Schedule 6 to the 2002 Act the period of time necessary to establish title by adverse possession is reduced from 12 years to 10 ending on the date of the application. However, the overall purpose of the 2002 was not to make acquiring title by adverse possession easier. This is achieved in two ways.
26. First, if a person applies to be registered as owner under paragraph 1 of Schedule 6, the registrar must notify the registered proprietor who in turn can require that the application be dealt with under paragraph 5 of Schedule 6. Unless one of the three conditions is met, the application will fail. In other words, if paragraph 5 is invoked by the person objecting to the application, it is not enough to show adverse possession for 10 years. It is also necessary to satisfy one of the three conditions.
27. In this case Mr and Mrs Rees invoked paragraph 5, and Mr and Mrs Teah responded by stating that they relied on paragraph 5(4). It is not strictly necessary for the Applicant to state at the outset which condition they seek to rely on: see the analysis in *Cooper v Gick* [Ref 2007/1003]
28. It is also to be noted that the second condition, set out in paragraph 5(3), applies to a person who was in fact in adverse possession for a period of more than 12 years before the coming into force of the 2002 Act. It is the practice of this Tribunal, and the courts, to allow an applicant to rely on this provision, even if not relied on at the outset (see *Cooper* above, and paragraph 22-79 of *Adverse Possession* by Jourdan and Radley-Gardner).
29. I mentioned above that there are two ways in which it is harder for a person to claim possession under the 2002 Act. Under section 29(2)(a)(iii) of the 2002 Act, on a registered disposition of a registered estate, the priority of an interest falling within Schedule 3 to the Act is protected. The purpose of these provisions is to protect the rights of persons in actual occupation. These are rights of persons in actual occupation of land whose rights are not noted on the register of the land being disposed.
30. The 2002 Act limits the circumstances in which unregistered rights of persons in actual occupation can override a registered disposition. Paragraph 2 of Schedule 3 provides that the interest will not be protected if it 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 of which the person to whom the disposition is made does not have actual knowledge of it at the time.

31. Putting it more simply, the effect is that if Mr and Mrs Teah acquired the right to apply to be registered as owner by reason of their adverse possession of the disputed land, Mr and Mrs Rees will be bound by Mr and Mrs Teah's right only if they were in actual occupation of the land, and their occupation was obvious on a reasonably careful inspection of the land at the time of the sale to Mr and Mrs Rees, or Mr and Mrs Rees knew of their interest.

Application of the law to the present facts

32. The first issue which arises is whether or not Mr and Mrs Teah have been in adverse possession for either 12 years before the coming into force of the 2002 Act or 10 years since. The disputed land is a strip of garden. The relevant test must be how this land would commonly be used. It is not separated from the remainder of the garden of No 21 in any way. It is, and has been, unarguably part of the garden of No 21 since that property was bought.
33. I have no hesitation in accepting the evidence of Mr Teah on this point. He has used the disputed land as his own since he bought his property. It was originally laid to lawn, and subsequently gravelled and planted with a variety of bushes. I do not accept that Mr or Mrs Craddock did anything on the land. It is regrettable that they could not attend the hearing, but I do not accept their written evidence in preference to the evidence given by Mr Teah. In any event this evidence is not entirely clear, and seems to rely on the fact that the boundary, on paper, showed the disputed land as part of No 22.
34. It seems to me that anyone looking at the disputed land at any time since 1995 would have considered it as part of the garden of No 21.
35. I bear in mind, of course, that the line on the transfer is drawn in a straight line, and that there is something puzzling about the fact that the disputed land is not in line with the access way to the back. It was not uncommon, however, and for whatever reasons, for developers to lay out estates in this way.
36. I accept that the occupation has been exclusive, and with the necessary intent to possess, for well over 12 years. Mr and Mrs Teah had acquired adverse possession,

therefore, before the 2002 Act came into force, and can rely on the second condition set out in paragraph 5 of Schedule 6 to the 2002 Act. I do not therefore have to consider whether he and his wife can rely on the third condition.

37. Lastly, there is the issue of whether or not their interest over rode the disposition of the registered estate to Mr and Mrs Rees. Mr and Mrs Teah were, in my judgment, clearly in occupation of the disputed land at the time of the sale. This being the case, Mr and Mrs Rees are bound by their interest, even though Mr and Mrs Rees did not know of the interest claimed.
38. For all the above reasons I will order the Chief Land Registrar to give effect to the application.
39. In principle Mr Teah is entitled to his costs of the reference, including disbursements (train fares, postage etc) and £19 per hour for work preparing the case. If he wants to make a claim, a schedule with supporting invoices is to be sent to the Tribunal and to Mr and Mrs Rees within 14 days of the date of this decision, who will then be able to make written representations within a further 14 days.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 3rd day of December 2019

