

[2019] UKFTT 0250 (PC)

REF/2018/0346

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

James Dempsey and Sandra Mary Dempsey

APPLICANTS

and

(1) David Shelton Tansley and (2) Huw Thomas William Goodman

RESPONDENTS

**Property Address: Part of Farnham Road, Slough SL1 4XP
Title Number: BK482088**

ORDER

IT IS ORDERED as follows:

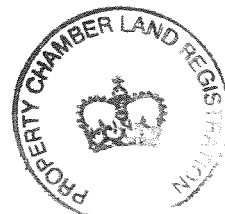
The Chief Land Registrar is directed

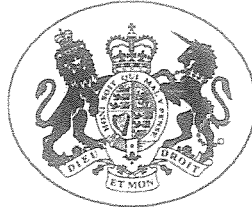
1. to give effect to the Applicants' application dated 13 February 2017 for registration of title to the land coloured blue on the plan marked JD1 and attached to the Applicants' Statement of Truth dated 7 February 2017, but
2. to cancel the application for registration of title to the land coloured yellow in that plan.

Dated this 7 March 2019

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL





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DECISION

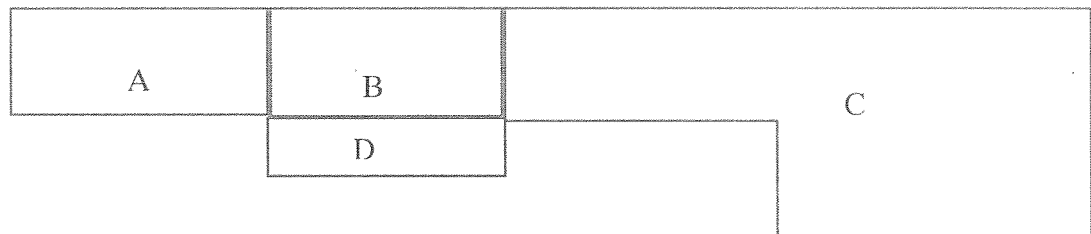
Introduction

1. Mr and Mrs Dempsey, the Applicants, have applied for registration of title to land behind their premises at 163C and 163D Farnham Road, by virtue of adverse possession. The Respondents, Mr Goodman and Mr Tansley, are the registered proprietors of the land in dispute. They have objected to the application, and have served a counter-notice under paragraph 3 of Schedule 6 to the Land Registration Act 2002 (explained below). The dispute has been referred to this Tribunal pursuant to section 73(7) of the Land Registration Act 2002.

2. I visited the site on 21 February and heard the parties at Alfred Place on 22 February 2019. Neither party was legally represented and I am grateful to the parties for presenting their cases to me.
3. I have decided that the Applicants have made out their case so far as part of the land is concerned and I have made a direction to the registrar accordingly, for the reasons set out below.

The disputed land and its conveyancing history

4. The diagram below is a sketch plan and is not to scale. Two areas, labelled C (the building) and D (part of the back yard), together comprise the land known as 163C and 163D Farnham Road, of which the Applicants are registered proprietors, under title number BK326886.
5. The land to which title is claimed by adverse possession is also in two areas, labelled A and B (corresponding to the yellow and blue areas, respectively, on the plan attached to the Applicants' application to HM Land Registry).



6. Areas B and D together form a back yard used as a smoking area for the restaurant; they are enclosed by a wooden frame and occupied by tables and benches. Area A is outside the wooden framework and is indistinguishable from the rest of the area behind the shops, which is accessed from Montrose Avenue to the south.
7. Both areas, A and B, are within the registered title of the Respondents along with the shop and buildings known as 163, 163A and 163B under title number BK259775. The Respondents are landlords and have not carried on business themselves at their property, but they say that they visit it twice a year at least.
8. The Applicants held 163C and 163D Farnham Road under a lease from 1989 onwards. A copy of the lease was not in the hearing bundle but was enclosed with the application to HM Land Registry; the demised premises included areas A and B. The lessor was a Mr Gilmore. In 1994 Mr Dempsey agreed to purchase the freehold. In

fact it was transferred in two separate transfers, the one relating to the building itself (area C in the plan above) for £70,000 and the other for the short strip of land out of doors (area D) for £1. Area D was part of title number BK259775 and therefore removed from that title on sale. Areas A and B were also part of BK259775; neither was included in either of the transfers to Mr and Mrs Dempsey. The transfers gave the Applicants a comprehensive right of way with and without vehicles “over and along the accessway leading from the rear of the Property to Montrose Avenue”.

9. The rest of title number BK259775, including areas A and B as well as the adjoining building (not shown on my plan), was transferred by Mr Gilmore to the Respondents in 2000.
10. Mr and Mrs Dempsey carried on a business selling blinds from their property, from 1989 (initially under the lease) until 2007. When they retired in 2007 Mr Dempsey transferred his registered title into the joint names of himself and Mrs Dempsey. They sold the business in 2007 to Faraday & Pocock, to whom they granted a five-year lease. In 2010 Faradays left, and in that year they leased the premises to Mr Arthur Pluta.

The relevant law

11. The law that I must apply is not in dispute. The Applicants cannot show twelve years' adverse possession prior to 2003 because they were present pursuant to the lease prior to 1995. Therefore their application was made under Schedule 6 to the Land Registration Act 2002. The Respondents have required that the application be dealt with under paragraph 5 of Schedule 6 and therefore the Applicants must show that they meet one of the three conditions set out in paragraph 5(2) to (4):

(2) The first condition is that—

- (a) it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the applicant, and
- (b) the circumstances are such that the applicant ought to be registered as the proprietor.

(3) The second condition is that the applicant is for some other reason entitled to be registered as the proprietor of the estate.

(4) The third condition is that—

- (a) the land to which the application relates is adjacent to land belonging to the applicant,
- (b) the exact line of the boundary between the two has not been determined under rules under section 60,
- (c) for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him, and
- (d) the estate to which the application relates was registered more than one year prior to the date of the application.

12. Only the third condition is relevant. Paragraphs (4)(a), (b) and (d) are clearly satisfied, but paragraph (c) requires detailed consideration. The Applicants must show that they have been in adverse possession of the disputed land for ten years, and that for at least ten years prior to the date of application they reasonably believed that the land was theirs.

The case for the Applicants and the evidence

13. I can deal briefly with area A. The Applicants agreed at the hearing that they have not been in adverse possession of it since they have simply used it for vehicular access within the terms of their right of way under the 1995 transfer.

14. So the application fails so far as area A is concerned.

15. As to area B I have to look at the following questions:

Have the Applicants been in adverse possession of area B for ten years?

16. Area A is currently occupied by tables and benches and enclosed – with area D - in a wooden framework put up by the tenant. The Applicants, by their tenant, are certainly in adverse possession now. But the tables and benches have been there only since 2010, when Mr Pluta set them up after asking permission from the Applicants.

17. The Applicants' evidence is that they have occupied area B from 1989 onwards. The blinds they sold were too long to display or store in the shop and so they kept them outside, as well as bins and other materials. They maintained the land by keeping it tidy. From 2007 to 2010 the new tenant did the same. Their case is that area B was full of bulky materials.

18. The Respondents did not challenge the Applicant's evidence on this point of fact. They said that they thought the presence of temporary materials on area B did not amount to adverse possession.

19. Nevertheless I find that the Applicants have been in factual possession of area B all along, first as tenants under the 1989 lease and then in adverse possession on their own account from 1995 onwards. The fact that the materials stored there were not permanent does not prevent their being in adverse possession; what is important is that they made full use of area B, and no-one was able to do so because of the volume of materials they kept there.
20. To be in adverse possession the Applicants must not only have been in factual possession but must also have intended to possess it to the exclusion of everyone else. They say that they intended to possess the land to the exclusion of everyone else because they believed all along that they owned it. It is convenient to examine that in the context of paragraph 5(4) of Schedule 6 (set out at paragraph 11 above), because that paragraph expressly requires that they have held that belief, that it must have been a reasonable belief, and that that belief continued for at least ten years prior to the application.

Did the Applicants believe that area B was theirs?

21. The Applicants' explanation of why they believed the land was theirs goes back to the 1995 transfers, of which it will be recalled that there were two.
22. What Mr Dempsey says is that he believed that he was buying area B as well as the building, and looking at the plan attached to the 1995 transfer that included area C (the building) one can see why. The copies available are not very good and the original was poorly drawn, but there is a thick red line extending from the back door of the building along the length of areas A and B. If scaled up, the line would extend most of the way across areas A and B if not all the way; it is clearly not supposed to be drawn to scale. The only sensible interpretation of that red line is that areas A and B were supposed to be included in the sale.
23. As I noted above the 1989 lease included areas A and B. Mr Dempsey's evidence is that he was buying the area that had been let to them.
24. The plan is signed by Mr Gilmore and Mr Dempsey. HM Land Registry registered Mr Dempsey as proprietor of BK326886, comprising areas C and D on my plan, even though the plan to the transfer relating to area C appears to include areas A and B.
25. Mr Dempsey's evidence about area D is that when he and Mr Gilmore were discussing the sale they looked at the back yard and he asked for area D. If he did not buy it Mr Gilmore was going to be left with an odd patch of land that he could not use. Mr

- Gilmore said “ok but it’ll cost you”, so Mr Dempsey gave him a pound from his pocket, and they shook hands. He instructed his solicitor to draft the extra transfer.
26. Area B is part of the yard, and is undifferentiated physically from area D.
 27. Why area D would have been transferred if Mr Dempsey and Mr Gilmore had not believed that Mr Dempsey was buying area B is incomprehensible. Areas B and D together make a small but serviceable back yard. Area D in isolation is useless.
 28. Accordingly I accept Mr Dempsey’s evidence, with which Mrs Dempsey agrees, that he thought he had bought area B in 1995. I find that Mr Dempsey and Mr Gilmore signed the plan in the belief that the red edging included areas A and B. But the transfer, no doubt due to a conveyancing error, only included the title number BK326886. Areas A and B were part of BK259775, and the registrar probably did not notice, and at any rate did not query, the rather indistinct red mark on the plan that the parties to the conveyance regarded as indicating their inclusion.
 29. I have taken no account of Mr Gilmore’s letter to the tribunal, since he did not attend to be cross-examined (I accept the Applicants’ evidence that they do not now know how to contact him), but I note that he supplied a Statement of Truth to HM Land Registry in support of the Applicants’ case that areas A and B were omitted by mistake.
 30. That mistake cannot now be corrected by rectification, and no application for rectification has been made. But the mistake accounts for Mr and Mrs Dempsey’s belief that they owned the land. I find that they did so believe from 1995 onwards, and that their belief was reasonable.
 31. Mr Dempsey went on to explain that when he transferred his property into the joint names of himself and Mrs Dempsey in 2007 his solicitor pointed out that his registered title did not include areas A and B. But his solicitor told him that that did not matter because it was his by adverse possession. Mr Dempsey accepted that, and he and Mrs Dempsey therefore continued to believe that it was theirs. The lease to Mr Pluta (which is a short unregistered lease) does not include areas A and B but Mr Pluta understood that the Applicants owned the back yard and asked their permission before installing his tables and benches and the wooden framework.
 32. Mr and Mrs Dempsey’s solicitor did not give accurate information. For the reasons mentioned at paragraph 12 above, adverse possession of Area B had not conferred title upon the Applicants. But they did not know that. They accepted what their solicitor told them and I find that they continued to believe, and reasonably believed, that area

B was theirs from 2007 onwards after the error in the registered title had been revealed.

Did the Applicants so believe for at least ten years ending with the date of the application?

33. The precise meaning of paragraph 5(4)(c) is unclear. To repeat:

“for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him”.

34. The scope of the words “ending on the date of the application” is not obvious – it may refer to the period of adverse possession or to the period of the belief. My understanding of the law following the Court of Appeal’s decision in *Zarb v Parry* [2011] EWCA 1306 is that the period of ten years of relates to the period of belief and that that period must end shortly before the date of the application.

35. The Applicants made their application in February 2017, after the Respondents had asked for the wooden furniture on area B to be removed in 2015. The Applicants believed from 1995 that area B was theirs, because they had thought that they had bought it. They were made aware that it was not within their registered title in 2007, but continued to believe that it was theirs until the date of the hearing. I have found that, in the circumstances, their belief was reasonable so far as area B was concerned. I find that they held their reasonable belief up to the date of the application and beyond.

Conclusion

36. In the light of the findings I have made above I find that the condition in paragraph 5(4) of Schedule 6 to the Land Registration Act 2002 has been made out by the Applicants, and accordingly I have directed the registrar to give effect to their application for registration as far as area B is concerned, as if the Respondents’ objection had not been made.

Dated this 7 March 2019
Elizabeth Cooke

BY ORDER OF THE TRIBUNAL

