

Property Team

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The members of the Hardwicke Property Team have specialised skills and experience in all aspects of the law relating to Real Property, Landlord & Tenant, Housing and other property-related subjects.

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It saved the tax payer millions, but it isn't that big a deal

So says Steven Woolf in his assessment of the law of Adverse Possession following the judgment of the Grand Chamber in *Pye v United Kingdom*

J.A. Pye (Oxford) Ltd and another v United Kingdom Application 44302/03 [2007] All ER (D) 177 (Aug)

Considering the amount of column inches written about the land that J.A. Pye lost as a result of the adverse possession claims of the Grahams, one might think the final decision of the Grand Chamber of the European Court of Justice was a pretty significant decision to all property owners and their lawyers. In fact apart from the millions of pounds the United Kingdom Government has now saved in compensation, the actual legal consequences could be said to be quite limited.

The reason for this is simply that with the introduction of the Land Registration Act 2002 (commencement date 13th October 2003) and the passing in October 2006 of the three year transitional period, adverse possession as we knew it; namely the acquiring of land summarily by reason of 12 years user has gone to be replaced by far narrower adverse possession parameters.

What we have been left with is the right to apply to the Land Registry, but with the almost inevitable result that once the registered proprietor is notified of the application of the prospective adverse possessor, the application will be rejected. It is only therefore in relation to the three exceptions that the decision of Pye has an effect. The three exceptions are (a) unconscionable (b) some other reason and (c) reasonable mistake as to the location of the boundary.

Now that the Grand Chamber has determined that the loss by the registered proprietor of land through adverse possession is not a violation of Article 1 of Protocol 1 (protection of property) to the European Convention on Human Rights, the old principles of factual possession combined with mental intention will continue to be assessed, but only of course in the very limited circumstances of the exceptions mentioned above.

The Grand Chamber came to its view by concluding that there was nothing offensive to one's Human Rights in two fundamental principles of possessory claims by reason of long user.

Firstly it was concluded that the existence of limitation period for actions to recover land pursued a legitimate interest and secondly that it was not "manifestly without reasonable foundation" for the registered proprietors interest in the land to be extinguished at the end of the limitation period.

As a result the Grand Chamber concluded that the fair balance required by Article 1 of Protocol No. 1 was not upset by the manner in which J.A. Pye lost the land. It follows that although J.A. Pye has come to the end of the litigation road, adverse possession still lives on but that it does so within the confines of the Land Registration Act, and is not burdened by Europe and the Human Rights legislation.

Steven Woolf

STOP PRESS - STOP PRESS

Revised date for Seminar "The Adjudicator to the Land Registry - Who, What & Why."

Apologies for the last minute cancellation of the seminar by Michelle Stevens-Hoare and Alistair Redpath-Stevens, it was due to the tube strike. It will now take place on Wed 31st October from 5.30-6.30. To book a place please phone Mary Speculand on 020 7691 1844 or email Mary.Speculand@hardwicke.co.uk

Did you see..... ? Recent cases you may have missed

Real Property, Town and Country Planning Act 1990 sections 172 and 285(1); Certificate of Lawful Use ("CLU"); Enforcement Notice

Staffordshire County Council v Challinor and another [2007] EWCA Civ 864

The First Respondent owned land which had been served with an Enforcement Notice in 1988 in relation to the importation of waste material. He used the land for business purposes and in 1994 obtained a CLU. The CLU did not, however, extend to waste processes and in 1996 the Council refused to grant a CLU relating to use of part of the land for storage and processing of waste materials. Thereafter in 1997 an Enforcement Notice was served in respect of the change of use from agriculture to waste-transfer. The Notice was appealed, unsuccessfully, on the basis of no change of use, following which the Council applied for an injunction to restrain further breaches of the Notice and brought proceedings against both Respondents to recover the costs of removing the waste materials from the land. The judge found against the Council, holding that the prohibition on challenging a Notice in s.285(1) of the 1990 Act did not override the conclusive nature of the CLU. The Council appealed.

Held: The judge had erred in regarding the activities covered by the 1994 CLU as being exempt from the 1997 Notice in so far as they took place on the smaller area of the CLU, and in the event of a conflict between the two the Notice would prevail. It had long been established that lawful use rights would be lost if a Notice was served and the rights were not then raised as a ground of appeal (that was the effect of s.285(1)), and there was no general right to assert existing use rights at the time the Notice had come into effect after an unsuccessful appeal or in the absence of an appeal. Such rights had to be asserted at the time of the appeal or they would be lost. The certification of such rights in a CLU made no difference.

Administration of Estates, Beneficial Interests, Property owned by mother and son

(1) Adekunle (2) Ritchie (Administrators of the Estate of A.V. Ritchie, deceased) v Ritchie (2007)

The Defendant son, one of 10 children, helped his mother (the deceased) to purchase her former council house under a discounted right to buy scheme and, for a period of time, lived with her in the property. After a period of absence he was back in the property at the time of her death. The administrators sought an order for sale, which the son defended on the grounds that they had been beneficial joint tenants and the principle of survivorship applied.

Held: the precedent established by *Stack v Dowden (2007)* applied to all cohabiting parties not just those in a platonic or sexual relationship. In this case there were unusual circumstances which rebutted the presumption that the beneficial interest should follow the legal interest: the mother had been unable to afford to buy the property without the son's financial assistance and, on the evidence, it was the intention of the parties that the son should have a 1/3 beneficial interest. In order to balance the interests of all the beneficiaries an order for sale was granted, postponed for 6 months.

Strike Out, Finality in Litigation

Ustimenko v Prescott Management Company Ltd [2007] EWHC 1853 (QB), [2007] All ER (D) 48 (Aug)

Following proceedings in the LVT where the management company of a block of flats had pursued a claim for unpaid service charges which was upheld on appeal to the LT, the unsuccessful leaseholder issued a claim against the Dft for breach of lease, disrepair, harassment, libel and defamation, abuse of court procedures, damages and costs. The Dft counterclaimed for further service charge arrears

Held: On cross applications to strike out, *inter alia* the Court dismissed the breach of lease claim as an abuse of process as it should have been raised in the LVT proceedings and transferred the disrepair and Pt 20 claims to the county court.

Case summaries Andy Creer and Alice Marshment

Regulation Updater...

Consultation on Overriding Easements

On 17th August 2007 The Department for Communities and Local Government opened a consultation (which closes on 26th October 2007) to amend section 237 of the Town and Country Planning Act 1990. The section currently allows easements and other rights to be overridden to enable building works to be erected, constructed, carried out or maintained where the land is held for planning purposes. However, such rights cannot be overridden permanently. The proposed amendment would extend section 237 to any use of land, thus allowing the subsequent use of the land to benefit from the easements being overridden. Compensation for the infringement or loss of the rights would be calculated according to the depreciation in the value of the land with the benefit of the rights. See: <http://www.communities.gov.uk/index.asp?id=1512305>

Alice Marshment

Land Registry: e-Conveyancing – Secondary Legislation, part 2

The consultation period on further secondary legislation required for the introduction of e-conveyancing runs from 10th August to 16th November. The consultation document includes proposals for creating electronic legal charges and the exchange of paper contracts electronically and further facilities for the electronic lodging of applications. It can be downloaded at <http://econsultations.e-conveyancing.gov.uk>