

[2019] UKFTT 0021 (PC)

REF/2017/1058

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

BEVERLEY TIBBLE

APPLICANT

and

(1) DAVID WALTON ROUTLEDGE

(2) TIMOTHY GILES PLATT

RESPONDENTS

**Property Address: Greensleeves, Royal Lane, Hillingdon
Title Number: AGL 57782**

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

Sitting at: 10 Alfred Place

On: Tuesday and Wednesday 30 and 31 October 2018

ORDER

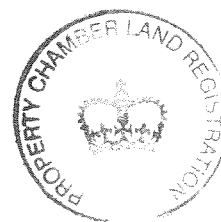
UPON hearing the Applicant and Counsel for the Respondents

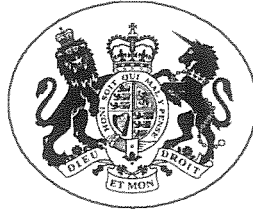
IT IS ORDERED that the Chief Land Registrar shall cancel the application made by the Applicant dated 11th May 2017 for registration of title by adverse possession.

Dated this 7th day of November 2018

Roger Cohen

BY ORDER OF THE TRIBUNAL





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(3) STEPHN MILES PLATT

RESPONDENTS

**Property Address: Greensleeves, Royal Lane, Hillingdon
Title Number: AGL 57782**

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

**Sitting at: 10 Alfred Place, London W1
On: Tuesday and Wednesday 30 and 31 October 2018**

The Applicant appeared in person

Henry Webb instructed by Worsdell & Vintner appeared for the Respondents

DECISION

Adverse possession-Respondents were the owners of the paper title of a meadow to which the Applicant claimed title by adverse possession - evaluation of evidence as to possession and intention- issues as to physical possession and intention to possess- whether Applicant ,if in adverse possession beneficiary under section 75 Land Registration Act 1925 where there were successive interests in the meadow land

The following authorities are referred to in the decision:

J A Pye (Oxford) Ltd v Graham [2003]1 AC 419 HL

Powell v MacFarlane (1977) P&CR 452 Slade J

Tecbild Ltd v Chamberlain (1969)20 P&CR 633 CA

The Inglewood Investment Company Ltd v Baker [2003] 2 P&CR 23 CA

Introduction

- 1 The Applicant (to whom I will refer as Ms Tibble) is passionate concerning the rescue of horses and ponies. This reference considers whether her endeavours in this regard allow her to claim possessory title to land which, she claims, she has used for her rescue activities.
- 2 The land in question forms part of title number AGL57782 (formerly MX249512) and known as the freehold land being Greensleeves, Royal Lane, Hillingdon. I shall refer to the whole of the land in this title as “the Entire Site”). The Entire Site lies on the western side of Royal Lane and is bounded as follows:
 - (a) to the south by two residential properties being Greenwood and Grove House, both of which front onto Grove Lane;
 - (b) to the west by land used as a nature reserve;
 - (c) to the east by Royal Lane; and
 - (d) to the north by other land including a residential property called Greensleeves.
- 3 The registered proprietors of the Entire Site are the Respondents, David Walton Routledge, Timothy Giles Platt and Stephen Miles Platt. I was told that the First Respondent, who played no part in the hearing, is aged about

80 years. The Second and Third Respondents are both nephews of the First Respondent. The Third Respondent gave evidence before me. The Respondents were registered as proprietors of the Entire Site on 30 June 2008.

4 Ms Tibble claims possessory title by adverse possession to that part of the Entire Site shown on her application to HM Land Registry dated 11 May 2017. I shall refer to that part of the Entire Site as “the Land”. The northern half of the Entire Site is woodland. The southern half is field or meadow. The southern half is the Land. HM Land Registry allocated to the Land the provisional title number AGL415675.

5 The Entire Site has been owned by members of the Routledge family since at least 1951. It will be necessary in this decision to describe the transmission of ownership at relevant times.

6 I refer to the application by Ms Tibble to HM Land Registry dated 11 May 2017. The application form referred to two applications in priority order as follows:

- (a) adverse possession under Sch 12 para 18 of the Land Registration Act 2002; and
- (b) alternatively, adverse possession under Sch 6 para 1 of the Land Registration Act 2002.

7 The application was accompanied by Ms Tibble’s statement of truth in support of an application for registration based upon adverse possession in Form ST1. In the form, Ms Tibble stated that:

“the land has been continuously enclosed with fencing and a gate/gates by me at my own expense since January 1988. I have had the only keys for the locks that I fitted. I have maintained/replaced the fencing/gates locks from time to time.”

8 In correspondence with HM Land Registry, Ms Tibble confirmed that she chose to proceed under the old rules (known as the transitional provisions) “as I have been in adverse possession for such a long time and if that fails

and only then I would ask you to consider the application under the new rules.”

9 The Respondents objected to the application. Accordingly, the disputed application was on 13 November 2017 referred by HM Land Registry to this Tribunal for determination under section 73 Land Registration Act 2002.

10 The law of adverse possession in relation to registered estates is now governed by the Land Registration Act 2002 which, so far as is relevant, came into force on 13 October 2003. For the reasons given in paragraph 8 above, the factual issues in this reference concern the entitlement of Ms Tibble to be registered with possessory title having regard to the law as it stood before the Land Registration Act 2002 came into force.

The reference

11 The reference proceeded with Ms Tibble communicating directly with the Tribunal and with solicitors acting on behalf of the Respondents. All correspondence with Ms Tibble was to the address she had notified to the Tribunal for correspondence. The progress of the reference included the following:

8 December 2017 – the Tribunal wrote to each party giving a deadline for its statement of case. The letter stipulated that the statement of case must include the documents which were important to each side’s case and which the Tribunal or other party would require to understand that party’s case.

13 February 2018 – the Tribunal issued listing questionnaires to each party for completion and return.

24 April 2018 – Ms Tibble returned duly signed her listing questionnaire. In the questionnaire she said that she was acting in person but would be represented at the hearing by counsel to be appointed once the hearing date was fixed.

12 July 2018 – the Tribunal wrote to both parties with notice of the site visit to take place on Monday 29 October and the hearing on 30 and 31 October 2018.

23 October 2018 – the Tribunal wrote to Ms Tibble enclosing a copy of a letter to the Respondents’ solicitors which concerned evidence at the hearing.

The site visit

- 12 I conducted a site visit on Monday 29 October 2018. The site visit was due to commence at 2pm. By 2pm I was joined by Mr Webb, Counsel for the Respondents, Mr Crowther, the solicitor for the Respondents, Mr Matthew Routledge (the son of the First Respondent), Mr Platt, (the Third Respondent) and Mr Stephen Whitley. Neither Ms Tibble nor anyone on her behalf was present
- 13 I asked the Tribunal office to telephone Ms Tibble to enquire if she was attending. The Tribunal was not able to obtain any response and so the site visit proceeded as best as it could, given that the access to the Land was not possible as the gate from Royal Lane was locked and the Respondents did not have a key. Just as the site visit came to an end, Mr Anthony Hall presented himself, on behalf of the Applicant. Mr Hall had a key to the access gate, which he opened, enabling those present to go on to the Land and to view the site. Two horses were present on the Land at the time of our visit.
- 14 My further observations were as follows:
- (a) Gates: the access way from Royal Lane was gated with a metal gate. The gate was not corroded and did not appear to be old.
 - (b) Fences: the eastern boundary on Royal Lane was (not robustly) fenced with wire or wooden fencing. On the western boundary there was corrugated metal sheeting fencing off the Land. It looked like a recent installation.
 - (c) inner fence comprised some arris fencing which was not obviously old and could well have been erected recently.

The hearing

15 At the commencement of the hearing on Tuesday 29 October, the Applicant applied for the hearing to be adjourned. Her grounds for seeking an adjournment were that:

15.1 she had been taken by surprise, not appreciating that the hearing was due to commence that day. In particular, post often did not reach her but was taken by neighbouring students;

15.2 she had been distracted by dealing with serious illness suffered by a member of her family,

15.3 she was about to make a journey to the United States where she would be concerned with the ill-health of another relative;

15.4 had she appreciated the hearing was today, she would have arranged to be represented by a barrister;

15.5 Ms Tibble said that she felt scared having to present her case in a hearing room where the Respondents were represented by Counsel.

15.6 her witnesses, Messrs Donald and William Beach were not available.

16 Following submissions from the Ms Tibble and also Counsel for the Respondents, it was agreed that the hearing would be put back to 2pm to enable Ms Tibble to review the papers and compose her thoughts. The adjournment to 2pm would give her time to contact the Beach's to see if they could be made available for Wednesday 30 October. The hearing adjourned at about 11.10am and resumed at 2pm.

17 At 2pm the Ms Tibble said that she had spoken to an advisor and sought an adjournment of the hearing to a later date. I rejected that application and gave my reasons for so doing. In summary and having reviewed the Tribunal's file, it was clear that the Tribunal had been in correspondence with the Applicant at her home address at all times and there had never been any suggestion from Mr Tibble to the Tribunal that this was an inconvenient address for correspondence or that another address ought to be used.

- 18 This was Ms Tibble's application and had she not received a hearing date within a reasonable time after 24 April 2018 when she returned the listing questionnaire, she ought to have contacted the Tribunal Office. On 12 July 2018, the Tribunal wrote to both parties giving notice of the hearing on 29 and 30 October and of the site visit on 28 October.
- 19 The Tribunal Office wrote to the Applicant on 23 October 2018 and in the week before the hearing, following an instruction given by me to the Listing Section, both parties were telephoned to enquire as to the delivery of skeleton arguments and arrangements for the site visit.
- 20 It was also accepted by Miss Tibble that on about 23 October she received from the Respondents a copy of the hearing bundle.
- 21 On behalf of the Respondents it was said that the cost of attendance at the hearing were substantial.
- 22 Finally, the Tribunal's overriding objective is to deal with cases fairly and justly, which includes dealing with the case in ways which are proportionate to the anticipated costs and in avoiding delay.
- 23 Ms Tibble could not have been taken by surprise, as she contended. The Tribunal is used to managing hearings where one side is represented but the other is not. An adjournment would cause a significant waste of money including public money and delay. Accordingly, I rejected the application for an adjournment and the hearing proceeded.

Applications on the second day

- 24 On the second day of the hearing, Ms Tibble produced about 10 photographs which she thought might be relevant. With the agreement of the respondent's Counsel, I looked at the photographs. One was of a pig, the others seemed to be injured limbs of horses or ponies. Clearly they were of no relevance to the issues for determination.
- 25 Also, on the second day of the hearing Ms Tibble consented to an application by Mr Webb for permission to rely on the second and third

witness statements of Matthew Routledge, both of which had been served later than the time limit directed by the Tribunal for factual evidence.

The witnesses

26 Witness statements had been made by 8 witnesses all of whom, except one, attended to give evidence. My assessment of the witnesses and their evidence follows:

- (a) *Beverley Tibble* - Ms Tibble gave evidence in support of her case. Her evidence was dominated by two points to which she kept returning. First, she was concerned to rescue horses and ponies and had done her best to care for them. Secondly, she questioned why the rightful owners had never asked her what she was doing on the Land. This led to her avoiding answers to questions and dealing directly with what she was asked. Ms Tibble's recollection of events was faltering. I treat her evidence with caution;
- (b) *Anthony Hall* – Mr Hall is a friend of Ms Tibble. His grasp of dates and details was far from clear. He said that he had performed small items of work for Ms Tibble on the Land from time to time. I treat his evidence with caution;
- (c) *Donald Beach* – Mr Donald Beach deals in horses and ponies and has sold a pony to Ms Tibble. I am satisfied that, in his oral evidence he sought to answer truthfully. However, his answers indicated that the assistance that he could give was limited. Mr Williams Beach is his nephew. Mr William Beech could not get time off from work at short notice to attend the hearing; and
- (d) *William Beach* – Mr William Beach did not attend the hearing. Given the fact sensitive nature of the case, I do not attach any weight to his witness statement in circumstances where he was not present to be crossed- examined.

27 On behalf of the Respondents, four witness statements were served including that of the Third Respondent. All the Respondents' witnesses attended for examination. Ms Tibble explained that she did not know how to ask

questions of witnesses. Accordingly, with each of the Respondents' witnesses, after giving Ms Tibble an opportunity to ask any questions (which to a limited extent she did) I examined each witness to the extent that I felt proper, with the Respondents' Counsel having an opportunity to re-examine. My assessment of those witnesses is as follows:

- (a) *Stephen Whitley* – Mr Whitley is a surveyor who acts for the Routledge family. His knowledge of the Land between 1987 and 2003 was limited and his evidence did not therefore assist materially;
- (b) *Matthew Routledge* – Mr Routledge is the son of the First Respondent. He was called largely to produce documents relied on by the Respondents. He gave satisfactory but limited factual evidence based on his recollection;
- (c) *Stephen Platt* – Mr Platt is the Third Respondent. He was a satisfactory witness but with limited knowledge of the facts at the material time; and
- (d) *Ian Cook* – Mr Cook has lived in the area for many years. His father lives at Grove House. Mr Cook was a satisfactory witness who, in his oral evidence, sought to assist me. That evidence included matters stated to him by one Tracey O'Neil. Ms O'Neil was not called to give evidence. I attach no weight to the hearsay evidence of Mr Cook as to what Ms O'Neil said. That is not a criticism of Mr Cook's honesty or credibility. The truth of the statements attributed to Ms O'Neil could be determined only by having direct evidence from her.

27.2 In relation to the evidence tendered on behalf of Ms Tibble, the Respondents had a criticism to make as follows. Mr Webb cross-examined Ms Tibble and also Mr Hall and Mr Beach as to how and with whose assistance their witness statements had been drafted. Their evidence was that they had had assistance from an adviser, a Mr Bains. Mr Bains had been introduced to Ms Tibble by Mr Hall. Mr Webb then asked Ms Tibble and Mr Hall if they were aware that Mr Bains was a solicitor who had been struck-off. They each stated that they did not know about this.

- 27.3 Mr Webb produced to me the following documents:
- (a) the decision of the Solicitors Disciplinary Tribunal that found Mr Bains in breach of professional rules as to financial matters and which led to an order from that Tribunal that Mr Bains be struck off;
 - (b) a High Court judgment dismissing Mr Bains's appeal against that decision of the Tribunal; and
 - (c) a court judgment in which criticisms of Mr Bains's honesty in relation to a property transaction in 2013 were upheld.
- 27.4 Mr Webb's submission was that one could not rely on the witness statements drafted with Mr Bains's assistance, given those serious matters proved against him.
- 27.5 I reject that submission for the following reasons:
- (a) it does not follow that, because Mr Bains deserved censure in the past, his involvement in advising or assisting the applicant and her witnesses would be improper or would contaminate their evidence;
 - (b) the evidence of Ms Tibble was that Mr Bains assisted her with grammar and wording, but the basic facts of her witness statement were hers;
 - (c) the best way to assess the evidence of each of these witnesses was by evaluating their written evidence, together with their answers to examination at the hearing and that my assessment of credibility and reliability should be based on those matters.

Ownership of the Paper Title

- 28 On 17 November 1951 Olive Routledge (the mother of the First Respondent and also Felicity Ann Platt (nee Routledge)) was registered as the proprietor of the freehold of the Entire Site.
- 29 I have been shown what was said to be a notice severing a joint tenancy in equity of the Entire Site given by James Routledge to Olive Routledge (the parents of the First Respondent and Felicity Ann Platt) on 10 April 1966. On

scrutiny that document is not signed by James Routledge. There is evidence that the Entire Site was held by James and Olive Routledge as joint tenants, which joint tenancy was severed. That evidence is found in correspondence between the solicitors dealing with the estate matters and the Capital Taxes Office.

30 James Routledge died on 23 January 1968. His will, of which probate was granted, does not make any specific devise in relation to the Entire Site, rather it formed part of the residuary estate to be held to pay the income to Olive during her widowhood and after her death or remarriage to be held in trust in equal shares for the First Respondent and Felicity absolutely.

31 On 1 September 2001 Olive Routledge died. Pursuant to a codicil to her will, probate to which was granted on 20 December 2001, the Entire Site passed to the First Respondent and his sister, Felicity Anne Platt as tenants in common in equal shares.

32 On 16 December 2007 Felicity Anne Platt (the mother of the Second and Third Respondents) died.

33 On 30 June 2008 the three Respondents were registered as the proprietors of the freehold of the Entire Site. The title register on that date recorded the First Respondent as living in Uxbridge and his nephews, the Second and Third Respondents as living in Essex and Blackheath London SE23 respectively.

34 It follows from the unchallenged evidence of Matthew Routledge, which I accept, that at 30 June 2008, the First Respondent was about 70 years of age.

The Documents

35 I now turn to the documents made available by the parties.

36 The statement of case by Ms Tibble lists three documents only. Two are plans of the land and the third was Mr Hall's statutory declaration dated 8 June 2017. That last item exhibited only a plan of the land.

37 The Respondents produced the following documents which are of relevance. First, there were the following receipts for rent from the Land:

- (a) 17 March 1991, Mrs M Howard - £50;
- (b) 18 June 1991, unnamed payer - £50;
- (c) 23 October 1996, rent from people at 16 Copperhill Avenue, Hillingdon - £50 per month; and
- (d) 8 September 1997, unnamed payee - £50 being part-rent.

38 On 1 September 2001, a valuation for probate was obtained for the land at Royal Lane for the estate of Olive Routledge (deceased). The valuation stated that the land was let on an informal agreement of £50 per month for grazing horses.

39 The land was valued for probate in the estate of the late Felicity Platt as at 16 December 2007. The valuation stated that the land was used as rough pasture formerly let for grazing horses at £50 per month, but currently unlet.

40 I was shown a letter dated 8 August 1997 from the solicitors for the Routledge family to John Whitley of R Whitley & Co, the family's surveyors, confirming completion of a transaction relating to land at the rear of Royal Lane on 8 August 1997. The letter enclosed a cheque for £3,687 odd, being the purchase price and Mr Whitley's fees. In his evidence, Mr Cook said that his father, who owned Grove House, had purchased a neighbouring strip of land from the Routledge family, in order to straighten the boundary. The land purchased had been incorporated within the garden of Grove House. I accept this evidence.

41 Further documents also provided some evidence relating to other activities on the Land.

42 On 23 February 2001, the Highway Enforcement Officer at the London Borough of Hillingdon, wrote to Whitleys requesting that the owners of the land known as Greensleeves be informed of the following concerns:

- (a) The boundary of the land, wrote the officer, ran parallel with Royal Lane, along which there are several trees. These trees have been inspected, both by officers from the Trees and Woodland Department and from the Highway Enforcement team. It is apparent that several of these trees are dead or in a dangerous condition and may cause injury and/or damage. Therefore, could the owner of Greensleeves arrange for some of these trees to be felled and others to be made safe; and
- (b) an invoice from Artemis Tree Services Limited, dated 21 March 2001 for £1,800 was produced, together with a note from the surveyors, quoting that this was the Tree Surgeon's account for work on the land at Greensleeves, Royal Lane, Hillingdon. A copy of the cheque settling the invoice was also produced to me.

43 Further attention was given to the trees on the boundary line in 2007. Artemis Tree Services Limited quoted £1,880 for the felling and removing of various trees. The First Respondent asked for a further price which was obtained from Advanced ARB Services Limited at £1,098. On 4 December 2007, the surveyors made an application on behalf of the First Respondent and Mrs F Platt, for permission to cut down or carry out work on trees protected by a tree preservation order. The land was described as paddock/rough woodland, with road frontage to Royal Lane between Grove Lane and Robin Wood Close, Hillingdon. The outcome of that application was not documented. However, one of the trees to be felled was a small dead tree near Old School Road. On the site visit I did observe a tree stump on the Land, point level with Old School Road, which is on the eastern side of Royal Lane. I find that this work was performed.

44 From an exchange of emails in April 2006, a London Borough of Hillingdon councillor passed on to the Nature Conversation Officer, a complaint about "kids going into the area along Royal Lane at night". The complaint was passed on to the First Respondent, who at this time was a councillor. Respondents' response was to confirm that he and his sister owned the land, enquire about the problem, saying that he had not been around much since

Christmas, but had not been 100%. There is no reference in this exchange to the land being occupied by a third party.

45 A number of photographs were produced to me. It will be recalled that the application to H M Land Registry was made on the basis of possession up to 13 October 2003. The Respondents' counsel suggested that material from later dates might provide a basis from which inferences could be drawn. I accept that submission and have taken the photographs into account as best as I can.

46 There is one principal point of access on to the Land which is the northern boundary of the Land. That is to say just a little to the south of where the Land ends and the woodland begins. It is also north of the T-junction with Old School Road.

47 After careful consideration, what the photographs show is that there was fencing one sort or another across the principal access way from October 2012. In October 2012, the fencing comprised of wooden boards. Quite how one would pass the wooden boards into the Land, is unclear. In October 2014, the wooden boards had been replaced by a seven bar metal fence. One can see beyond that fence another fence which crosses the Land from east to west. In a photograph dated July 2017, one can see two private property signs, one with black lettering on a white background and the other with white lettering on a red background. Seemingly the same sizes were observed on the site visit.

48 The balance of the photographs show debris and waste materials and felled trees. Also a structure which could have been a shelter for ponies. However, these photographs are not dated.

49 There are photographs which show the eastern boundary of the Land and the ditch which ran along that boundary. These photographs show a haphazard pattern of fencing. It would seem relatively easy for a human to penetrate.

Legal test for adverse possession

50 In his skeleton argument, the Respondents' Counsel referred, correctly in my view, to the twin requirements for adverse possession set out in *J A Pye (Oxford) Limited v Graham* (2003) 1AC 419 being:

- (a) factual possession; and
- (b) an intention to possess.

51 Adopting the summary in that skeleton, factual possession means an appropriate degree of physical control so as to constitute single exclusive possession:

“(iii) factual possession signifies an appropriate degree of physical control. It must be a single [and exclusive] possession, although there can be a single possession exercised by or on behalf of several persons jointly. Thus an owner of land and a person intruding on that land without his consent cannot both be in possession of the land at the same time. The question what acts constitute a sufficient degree of exclusive physical control, must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed ... everything must depend on the particular circumstances, but broadly ... 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.”

52 This statement of law comes from *Powell v MacFarlane* (1977) 38 P & CR 452, and was approved by Lord Browne -Wilkinson in *Pye* at paragraph 41. In his skeleton argument, under the heading “Factual Possession”, Mr Webb referred also to paragraph 77 of the speech of Lord Hutton in *Pye*. However, Lord Hutton was there addressing the proof of the intention to possess; see paragraph 74 of *Pye*.

53 The occupier of land claiming adverse possession must also prove the requisite intention to possess the land and on one's own behalf in one's own name to exclude the world at large, including the paper title owner, so far as was reasonably possible and that it was not, therefore, inconsistent for a

squatter to be willing, if asked, to pay the paper title owner while being in possession in the meantime.

Factual issues

54 Accordingly, there are two issues of fact for a decision in this reference being:

- (a) was Ms Tibble ever in factual possession of the Land during the period from 1987 to 13 October 2003 and if so for what period?; and
- (b) did Ms Tibble ever have an intention to possess the property on her own behalf or for her own benefit during that period and if so, when?

55 I will consider the evidence and make my findings of fact.

The Applicants' evidence

56 Ms Tibble stated that she first paid attention to the Land in or about April 1987. At that time, the Land was overgrown and did not seem to be tended by anyone. In cross-examination, Ms Tibble could not remember the exact date. She thought that the Land would be a good location on which to keep a horse. She engaged Anthony Hall (who also gave evidence) to fence off a small area in the northern corner and make a small secure enclosure. Pressed as to when this work was done, Ms Tibble told me that it was in the late 1980's or 1990's. She then bought a mare which she kept in the enclosure.

57 In cross-examination, the order of events as recalled by Ms Tibble was different. She told me that her objective was to keep horses safe. She rescued horses and had nowhere else to put the horses that she had rescued.

58 Ms Tibble stated that she employed a local builder to arrange for part of the enclosure fencing to be taken down. He then erected some cheap perimeter fencing comprising wire, timber posts and rail fencing, but only along the Royal Lane boundary.

59 Ms Tibble told me that at this time the horses she kept on the Land were tethered. The purpose of the cheap perimeter fencing was to keep the horses in. That fencing would not keep out either travellers or children.

60 Ms Tibble stated that this builder erected a cheap timber gate at the northern end and cleared a small driveway providing some off-street parking immediately one entered the Land. Ms Tibble stated that the gate was securely padlocked and that only she had control of the keys. Ms Tibble told me that the locked gates were there to keep the horses in. On a number of occasions in her witness statement and old evidence, Ms Tibble said that no one had contacted her to query or challenge her presence on the Land.

61 I note that the earliest of the photographs to show a cheap timber gate was dated 2012.

62 From time to time there were incursions from travellers and children. Ms Tibble told me that her concern was protecting her horses for whom she was scared. Whilst the children did not do any harm, Ms Tibble did not confront the travellers.

63 Ms Tibble stated that at the beginning of 1990 she further upgraded the boundary fences so that they became even more clearly defined and durable. Ms Tibble stated that she had custom-made wooden gates fitted at the northern end of the Land.

64 In cross-examination, Ms Tibble reiterated that she was doing her best to keep the horses in. Ms Tibble was asked about the photographs. One image, taken from the east in October 2012 showed rudimentary fencing in disrepair. Ms Tibble said that she had installed better fencing than that, but what she had installed had deteriorated.

65 Asked to explain why in an undated photograph the enclosed area was not fenced off, Ms Tibble replied that that gate was open whilst she had taken the horses out for a ride. It is more likely that the photograph shows no separation between the area in the northern part that is now enclosed and the rest of the Land. Challenged as to the quality of the fencing shown in

another undated photograph, Ms Tibble said that she did not want to spend a lot of money.

66 Ms Tibble accepted that the Google Maps photograph dated July 2017 showed roughly what one sees at the access point to the Land today. This is the photograph showing two private property signs referred to at paragraph 47 above.

67 Ms Tibble stated that she used contractors to maintain the Land, to fell trees growing in the wrong position, removed rubbish dumped by others before she had taken possession and cleared the drainage ditch. Ms Tibble repaired and maintained the boundary fences, cleared away trees and maintained the stable. Ms Tibble replaced the timber gates with a metal gate. Two Google Maps photographs from 2014 were produced. The first, dated July 2014, shows wooden boards across the access way. The second, dated October 2014 shows a metal gate. Asked about these photographs in cross-examination, Ms Tibble told me that the wooden boards had been stolen. They had been sufficient to keep in ponies up to 12 hands in height. The photograph shows the sort of things Ms Tibble put up in the 1990s. It was made as simple as she could to keep the horses safe.

68 Ms Tibble accepted that on two or possibly three occasions during approximately three decades of occupation, someone other than her trimmed some of the trees.

69 Ms Tibble stated that she could categorically confirm that no one else grazed horses on the Land at the same time as her since she first took possession around Christmas 1987. Nevertheless, in cross-examination Ms Tibble accepted that in the 1990s both her ponies and other people's ponies were to be found on the Land.

70 Ms Tibble stated that she kept numerous rescue horses on the Land and from time to time abused horses that had been referred to her by the RSPCA. Ms Tibble told me that she loves horses and that she has helped RSPCA and also an organisation called "Horse Welfare". Some rescued horses were

broken in and ridden. However, she did not keep tack on the land as anything of value left there would get stolen.

71 Ms Tibble stated that she permitted the Land to be used by Donald Beach, a horse dealer. Mr Beach was also a witness. He did not support Ms Tibble's statement that he had kept horses on the Land for about 30 years.

72 Ms Tibble stated that when the late TV presenter Keith Chegwin's pig died she allowed him to have his pig buried on the Land. It was put to Ms Tibble that this was an invented story. Ms Tibble rejected that, saying that she had rescued the pig, a male boar and two other pigs.

73 Finally, Ms Tibble produced an exhibit to her witness statement comprising no documents from the period from 1987 to 2003 but only a Land Registry plan and letter dated 16 August 2017, sales particulars produced by R Whitley & Co, two letters from Ms Tibble to R Whitley & Co in 2017 and two Google Maps photographs dated October 2012. Challenged as to why she had not produced any other documents to support her case, Ms Tibble said that she had suffered ill health; last year had not been great. She was dealing also with relatives who were unwell.

74 I asked Ms Tibble why she had waited until 2017 to claim title to the Land which she claimed to have occupied as long ago as 1987. Ms Tibble told me that she did not know that she could claim title until 2017. In 2017, a couple she met in a livery yard told her that she could put in a right to buy claim. This would be a goldmine.

75 Mr Anthony Hall made a witness statement and was cross-examined.

76 Mr Hall told me that the two horses present on the land during the site visit on 28 October were Ms Tibble's horses. Mr Hall stated that he had put in some posts and erected simple fencing. He told me that he did not know if this was in the 1980s but it was possible that it was in the 1990s. Mr Hall accepted that the fences stopped the horses getting out. That was the main objective of the fences. Mr Hall had never heard of a horse escaping from the Land.

77 Mr Hall recalled that there had been a gate into the Land made of wooden board. He made it more secure, more substantial. He did not have photographs to prove this. Ms Tibble had paid him £20 or £30 here and there to perform work. It was not really substantial; never a big job with big money. The works he performed were bits and pieces here and there.

78 Ms Tibble's final witness to attend was Donald Beach. In his witness statement he said that he had known Ms Tibble for about 30 years. She had sectioned off a corner in a field and that enclosure seemed quite secure. There was a small gate providing access to and from the enclosure and the surrounding land was very overgrown. Mr Beach stated that possibly a year later he went to the land where there were two new proper wooden gates and both were padlocked. There was a make-do stable with an adequate supply of water and there were two horses running around. He stated that over the last 30 years he kept scores of different horses on the Land with Ms Tibble's permission.

79 Mr Beach's answers in cross-examination were materially different. Mr Beach told me that he buys and sells horses and supplies feed for horses. Mr Beach had visited the land several times. He could not remember how many horses Ms Tibble kept there; he had put one or two ponies on the land. This happened three or four times over the years, not dozens and dozens. Although he had known Ms Tibble for a considerable number of years, he had not met her earlier than the 1990s. Mr Beach told me that he gave Ms Tibble feed in exchange for looking after a pony. This was a long time ago but he could not remember when. Mr Beach told me that he had been to the Land about five or six times and did not pay attention to the fencing. He recalled the ponies drinking from a bath.

The Respondents' Evidence

80 I heard first from Stephen Whitley of R Whitley & Co. He told me that he has driven along Royal Lane past the Land many times for over 40 years. On many such occasions he did not see horses on the Land. He first dealt with the Entire Site around 2000. The sale of a strip of land at the southern

boundary of the Land was not dealt with by him, but by one of his brothers. Mr Whitley told me that in dealing with the proposed sale he had visited the Land and not seen horses there.

81 Matthew Routledge is the son of the First Respondent. His three witness statements produced documents on which the Respondents rely and explained their provenance.

82 Mr Routledge told me that he was aware that the Land had been let to tenants in Copperfield Avenue at £50 per month.

83 He lived in Uxbridge from 1987 to 1991 but has since lived away from Uxbridge. He drives through Royal Lane about three or four times a year.

84 Stephen Platt in his witness statement commented on documents produced in support of the Respondents' case. He told me that in 1987 he was aged 16 and living with his parents in Essex. He has lived in London since 1999. He had visited Royal Lane no more than ten times. The family did not have any use for the Land during his mother's lifetime and it was let. He visited and was able to get on to the Land in 2016.

85 A final witness for the Respondent was Ian Cook. Mr Cook stated that his parents owned Grove House since 1956. Mr Cook was born in 1957. In 1991 he moved to the top of Royal Lane. He lives and works locally visiting his father (now aged 91) almost every day. Mr Cook's father retired in 1992 and purchased from the Respondents' family a strip of land on the boundary between Grove House and the Land simply to straighten the boundary line. Mr Cook told me that, from his personal knowledge, the perimeter fence on the western boundary of the land was in poor repair.

86 There would be times when horses would be seen on the Land, up to three at a time. Sometimes, there could be a period of up to one year when no horses were seen.

87 In October 2017, when Mr Cook knew that the Entire Site was for sale, an aris six foot mesh fence was seen just inside the makeshift fence running north-south on the eastern boundary.

88 From time-to-time the Cook family filled the trough from which the horses on the Land were able to drink.

Findings of fact

89 In coming to my findings of fact, I found the evidence of Ms Tibble far from convincing. Rather than address the detail of her possession of the Land and control over it, she kept coming back to her concern for the welfare of her horses and the absence of any challenge from the owners to her presence on the Land.

90 Neither of these points is necessarily of any relevance. Concern for the welfare of the horses does not amount to evidence of being in possession. Equally the absence of challenge is not a matter that Ms Tibble has to prove. Indeed, it may go against her, being consistent with her occupation of or presence on the Land being insufficient to amount to adverse possession.

91 The positive evidence we do have is inconsistent between what each witness (Ms Tibble, Mr Hall and Mr Beach) said in each of their witness statements and the evidence they gave at the hearing. There was also a lack of consistency between the witnesses themselves, particularly between Ms Tibble and Mr Beach.

92 These difficulties become overwhelming when one reflects on the absence of any documentary evidence whatsoever to confirm Ms Tibble's case.

93 Various reasons were given by Ms Tibble to explain the absence of any documents including:

- (a) her inability to deal with technology;
- (b) her not having possessed a camera for years
- (c) recent pre-occupation with her health and that of members of her family

The fact remains that Ms Tibble did not produce

- (i) photographs of her horses in the field
- (ii) photographs of the Land and its relevant features from time to time
- (iii) receipts for supplies, works and maintenance
- (iv) communications with the RSPCA and Horse Welfare
- (v) communication with Keith Chegwin

94 Given that this reference concerned the 16 year period from 1987 to 2003 any reasonable person in the position of Ms Tibble would have appreciated that a documentary record would be helpful if that person had an intention of possessing the land to the exclusion of the rightful owner.

95 By contrast, the Respondents' case was largely based on documents which recorded rent payments and works, consistent with ownership.

96 I accept the submission of the Respondents' counsel that the evidence of Mr Cook was of assistance to me, coming from a witness with no discernible interest in the outcome. Accordingly, I accept that there were periods of up to a year when horses were not seen on the land. This was consistent with the evidence of Mr Whitley who sometimes when he drove along Royal Lane did not see horses on the Land.

97 Accordingly, my finding is that on the balance of probabilities, Ms Tibble was not in factual possession of the land at any time between 1987 and 13 October 2003. It may be that Ms Tibble occupied with a horse or horses sporadically over that period. I do make any finding in that regard. Sporadic occupation is not what is required.

98 Although the relevant period for this reference has been from 1987 to 2003, inevitably there has been reference to later events. My impression is that the sporadic occupation of the land by Ms Tibble continued until October 2012. At that date we have the first photographic evince of wooden gates over the access way. One can only speculate whether this coincided with the First

Respondent who had dealt with the Land on behalf of the family and would then have been 75 years taking less of an interest in this property

99 I turn now to the question of intention to possess.

100 The Respondents' counsel referred to 2 further cases as to intention to possess. The first, *Tecbild Ltd v Chamberlain* (1969) 20 P&CR 633 is a decision of the Court of Appeal decided well before *Pye*. In his judgment at page 642 Sachs LJ said

“ ..it is no use relying only on acts which are equivocal as regards intent to exclude the true owner ..everything depends on the nature of the property and the nature of the acts.”

101 The second case is *The Inglewood Investment Company Limited v Baker* [2003] 2P&CR 23, a post *Pye* judgment of the Court of Appeal. In that case, the appellant erected fencing on the disputed land and some time later a sign such as “trespassers will be prosecuted”. The judge could find that the appellant did not have intention to possess because the purpose of the fence was to keep his sheep in and not to keep the owner out.

102 Each case turns on its own facts, but it seems here that Ms Tibble's intention to the extent that she was present on the Land was to find a place for her horses, not to exclude the true owner. That was the effect of her evidence. Indeed, it was only in 2017 that Ms Tibble became aware that she could claim title to the Land. That does not mean that she could not have formed the intention to exclude all others. However, the objective evidence of what Ms Tibble did and did not do is such that my finding is that Ms Tibble never had the requisite intention for adverse possession. At no time between 1987 and 13 October 2003 did Ms Tibble, to the extent that she occupied the Land, intend to exclude the owners.

103 Accordingly, Ms Tibble has not proved her case for adverse possession.

Legal issue

104 Counsel for the Respondent identified a legal issue as follows. Given the trust of the Land and successive interests created by the will of James Routledge, and on the assumption that the Applicant was in adverse possession of the Land for a period of 12 years between December 1987 and 13 October 2003, were the interests of all those entitled to an estate or interest in the Land extinguished prior to 13 October 2013?

105 Given my finding that adverse possession has not been proved, the legal issue does not arise to be determined.

106 However, as some time was spent on it during submissions, I will indicate briefly my views. On the balance of probabilities, the Land was held from the death of James Routledge as to one half by Olive Routledge absolutely and as the other by her for her life with the remainder to the First Respondent and Felicity in equal shares.

107 Those were interests in remainder or future interests within the meaning of section 15 (2) Limitation Act 1980. Accordingly, the limitation period for a claim by the paper owners of the Land did not expire until 6 years from the death of Olive Routledge in 2001 when the interests of the First Respondent and Felicity Platt fell into possession.

108 Therefore, on 13 October 2003, the time for the paper owners to bring a claim for possession was still running and the Land could have been recovered by legal action.

CONCLUSION

109 In the light of my conclusions about adverse possession and the legal issue, I have directed the registrar to cancel the application.

110 In the Land Registration Division costs follow the event and the Respondents are principle entitled to their costs incurred since the date of the reference. If they seek an order for costs they are to make an application within 28 days of the date of this order, with a detailed schedule of costs.

The Applicant will then have 28 days to make any submissions she wishes to make as liability for costs or the amount claimed, and the Respondents will then have 21 days to reply. If I make an order for costs, I may make an order either for detailed or for summary assessment, depending on the level of costs claimed.

Dated this 7th day of November 2018

BY ORDER OF THE TRIBUNAL

Roger Cohen

Roger Cohen sitting as a Tribunal Judge

