

[2018] UKFTT 0724 (PC)

REF/ 2017/0760

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN :-

THE COUNTY COUNCIL OF THE CITY AND COUNTY OF CARDIFF

APPLICANT

and

(1) MOHAMMED SAEED SHAD
(2) BEGUM (KNOWN AS SHAMA) SHAD

RESPONDENTS

Property Address: Land at the back of 8 Cefn Coed Road, Cyncoed, Cardiff

Title Number: CYM106999

ORDER

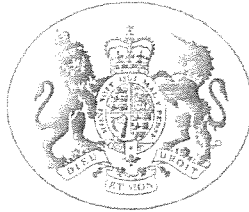
The Tribunal orders that the Chief Land Registrar do cancel the application of the Applicant, the County Council of the City and County of Cardiff dated ... to close the leasehold title CYM106999.

Dated this 5th October 2018

Michael Michell



BY ORDER OF THE TRIBUNAL



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(1) MOHAMMED SAEED SHAD
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RESPONDENTS

Property Address: Land at the back of 8 Cefn Coed Road, Cyncoed
Title Number: CYM10699

Before: Judge Michell

Sitting at: The Cardiff Civil Justice Centre

On: 1st October 2018

Applicant Representation: Ms Elizabeth Marshall, counsel, instructed by ...

Respondent Representation: Mr ... Vines, counsel, instructed by AG Lucas and Co.

DECISION

*APPLICATION TO CLOSE GOOD LEASEHOLD TITLE – WHETHER COUNCIL HAD
PAPER TITLE – WHETHER COUNCIL'S TITLE BARRED BY LIMITATION*

Cases referred to

J A Pye (Oxford Ltd) v Graham [2003] AC 419
Powell v McFarlane (1977) 38 P and CR 452

1. The First Respondent, Mohammed Saeed Shad (“Mr Shad”) is registered as proprietor with good leasehold title of land at the back of 8 Cefn Coed Road, Cyncoed, Cardiff. The registered lease is a lease dated 15th October 2002 made between Mr Shad and the second Respondent, Shama Shad (“Mrs Shad”) as lessors and Mr Shad as lessee for a term of 125 years from 29th September 2002 at rent of £50 per annum. The reversion expectant on the lease is not registered. The leasehold title was first registered on 9th January 2003. The County Council of the city and County of Cardiff (“the Council”) applied to HM Land Registry to close the leasehold title and to have the land in that title (“the Land”) added to freehold title number WA513902 of which the Council is the registered proprietor.
2. The Council relies on a conveyance dated 3rd September 1957 made between Western Ground Rents Ltd and The Lord Mayor Aldermen and Citizens of the City of Cardiff (to which I shall refer as “the Corporation”). . There is no doubt that the Corporation was the predecessor in title of the Council. By that Conveyance there was conveyed to the Council’s predecessor in title

“All that piece or parcel of land containing by admeasurement Sixty four Decimal point eight four acres or thereabouts situate between Lady Mary Road and Ty Gwyn Road in the City of Cardiff and which is more particularly described and delineated in the plan hereto annexed and thereon edged round with red”.

This land remained unregistered until 2010.

3. The land conveyed in 1957 lies to the south or rear of the houses built on the southern side of Cefn Coed Road. The property which is now 8 Cefn Coed Road is shown on the conveyance plan as part of a single enclosure with land lying to the west.
4. On 18th January 1958 the Corporation leased to Eugene Curran of “Tuston, Cefn Coed Road”

“All That plot of land situate at the rear of Lady Mary Road and Cefn Coed Road in the City of Cardiff containing by admeasurement 0.22 acres or thereabouts which demised land is more particularly delineated and shown on the plan annexed hereto and thereon coloured green”.

The Plan shows coloured green both the land and another adjacent area of land to the west. “Tuston” is the name of the house then standing on the site now occupied by 8 Cefn Coed Road and the land demised bordered the southern boundary of the grounds of Tuston, which grounds included not just 8 Cefn Coed Road but also what is the site now of another house. The lease (“the 1958 Lease”) was for a term expiring on 1st February 2001 and at a yearly rent of £10.

5. On 10th January 1974 the Corporation gave consent to the assignment of the leasehold interest in the land demised by the 1958 Lease by Mr Curran to Mr SA Simon. On 22nd May 1996 the Council gave its consent to Mr Simon assigning the same to the then owner of 8 Cefn Coed Road, Mr Mohammad Zaman Khan.
6. Freehold title to 8 Cefn Coed Road was registered under title number WA513902 on 14th November 1989. The Respondents were registered as proprietors of title number WA513902 in 2000. On 15th October 2002 the Respondents executed a lease in favour of Mr Shad for a term of 125 years from 29th September 2002. The property demised was the basement ground floor and rear garden of 8 Cefn Coed Road (including the swimming pool within the garden area). The rear garden was shown on the plans to the lease as including the land. The plan attached to the Lease shows the ground floor as comprising 2 flats. The Lease was registered under two title numbers. Title number CYM100898 comprised so much of the demised premises as was included in the freehold title of 8 Cefn Coed Road. The remainder of the demised premises were registered with good leasehold title under title number CYM106999. Only a good leasehold title was registered because no evidence as to the freehold title was lodged on registration.
7. On 25th September 2008 the Council’s solicitor wrote to HM Land Registry asserting that the Respondents did not have title to the Land asking how the lease had come to be registered under title number CYM106999. HM Land Registry replied on 6th October 2008.

8. Part of the land conveyed to the Corporation by the 1957 Conveyance, not including the Land, was registered under title number CYM492054 on 14th May 2010, the Council being the registered proprietor.
9. Mr Shad's grounds of objection to the Council's application were set out in a statement made by his solicitor, Mr Andrew Lucas dated 12th June 2017. These can be summarised as being (1) that the Council's predecessor authority, Cardiff City Council had granted a lease of the land to Mr Sam Simon, who had assigned the lease to Mr Zubir Khan, who had in turn assigned the lease to Mr and Mrs Shad; and (2) that Mr and Mrs Shad had been in adverse possession of the land for 13 years.
10. The Case Summary prepared by HM Land Registry described the nature of the objection as being that the lease registered under title number CYM106999 was a valid underlease. Mr Khan by his Statement of Case in these proceedings submitted that he was the freehold owner because the Council's title had been barred by limitation and the leasehold title was valid.
11. At the hearing Mr Vines, who appeared for Mr Khan, sought to argue an additional point, namely that the Council had not shown that it had ever had a good paper title to the land. That was not one of the grounds of objection raised by Mr Khan prior to the reference of the matter to the Tribunal. I do not consider it was part of what was referred to the Tribunal for determination. What was referred was the application and the objection raised to it by Mr Khan. Had Mr Khan raised as an objection the argument that the Council or its predecessor authority had never had a paper title to the land then Land Registry would have had to consider whether or not that objection was groundless and would have referred it to the Tribunal only if that objection was not groundless. I should note also that HM Land Registry would not have accepted the Council's application unless it was satisfied that the Council could show a good paper title.
12. Had the question of whether or not the Council had a good paper title to the land been before me then I would have found that it did. I have no doubt following a detailed consideration of the plan to the 1957 Conveyance and the plan to the leasehold title that the land is part of the land that was conveyed to the Council's predecessor in title by the 1957 Conveyance.

Adverse Possession: Law

13. The question to be answered when considering whether a person occupying land is “in adverse possession” for the purpose of Schedule 1 paragraph 8 to the Limitation Act 1980 is

“...whether the Defendant squatter has dispossessed the paper owner by going into ordinary possession of the land for the requisite period without the consent of the owner...Beyond that...the words possess and dispossess are to be given their ordinary meaning.”

(per Lord Browne-Wilkinson in *J A Pye (Oxford Ltd) v Graham* [2003] AC 419 at paragraphs 36, 37).

14. Legal possession is comprised of two elements:

- (1) A sufficient degree of physical custody and control (“factual possession”); and
- (2) An intention to exercise such custody and control on one’s own behalf and for one’s own benefit (“intention to possess”). “What is crucial is to understand that, without the requisite intention in law there can be no possession. Such intention may be, and frequently is, deduced from the physical acts themselves.” (*ibid* paragraph 40).

15. Factual possession has been described as follows:

“It signifies an appropriate degree of physical control. It must be a single and [exclusive] possession...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, I think 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.”

(per Slade J in *Powell v McFarlane* (1977) 38 P and CR 452 at pp. 470-471, cited at paragraph 41 in *J A Pye (Oxford) v Graham*).

16. What is required for the intention to possess is the intention to exclude the whole world, including the true owner of the paper title, from the land so far as is reasonably practicable and so far as the processes of the law will allow – see per Slade J. in *Powell v. McFarlane* above. The intention must not only be the subjective intention of the squatter but the squatter must also show by his outward conduct that he has such an intention. The intention must be manifested by unequivocal action – see *Prudential Assurance Co Ltd v. Waterloo Real Estate Inc* [1999] 2 EGLR 85 at 87. The use of the land must be such that the true owner, if he took the trouble to be aware of what was happening on his land, would know that the squatter was in possession

“It would plainly be unjust for the paper owner to be deprived of his land where the claimant had not by his conduct made clear to the worlds including the paper owner, if present at the land, for the requisite period that he was intending to possess the land” – per Peter Gibson LJ in *Prudential Assurance Co Ltd v. Waterloo Real Estate Inc* [1999] 2 EGLR 85 at 87

The Evidence

17. Mr Shad gave evidence. He used the Land to keep horses. He had heard from the previous owners that the Land belonged to the Council. At the time the Respondents bought 8 Cefn Coed Road, the Land was fenced off from the adjoining land to the south, east and west by existing fences. To the north was the garden of 8 Cefn Coed, in which there was an open-air swimming pool and a building containing the pump and filtration plant for the pool. When Mr and Mrs Shad bought 8 Cefn Coed Road, their three children were aged 9, 8, 6 and 4. Mr Shad had ponies for his children. From when the Respondents bought 8 Cefn Coed Road, they kept two ponies for the children on the Land but initially, in winter, the ponies were moved to a farm for shelter. As the children wanted the ponies nearby, in about 2013 Mr Shad had stables erected on the Land. First, he had a builder construct a concrete base and a few months later once the base was set hard, he had two wooden stables measuring 6 metres by 3 metres erected on the base. Two horses have been kept on the Land all the time from then on. Mr Shad erected a wooden picket fence across the garden to prevent his children accessing the swimming pool from either the side, where a path led to the Land or from the Land and to prevent the ponies from getting into the garden. A gate between the pump house and the pool gave access into the Land. Mr shad also laid concrete slabs to make paths from the gate to the

stables. Since 2013 he has also kept a goat on the Land. He has maintained the fencing and repaired it from time to time so as to stop the horses getting out.

18. The Council produced no evidence at all as to the use of the Land.
19. Ms Marshall, for the Council, submitted that the quality of evidence given by Mr Shad was not such that I should rely on it in making findings of fact. She pointed to the absence of any supporting documentary evidence, such as a receipt for the purchase of the stables and the lack of supporting photographic evidence.

Findings

20. I accept the evidence of Mr Shad. There are no grounds for my not to do so. He gave his evidence clearly, notwithstanding that he had suffered a stroke which affected slightly his delivery. His evidence was in no way shaken in cross-examination.

Conclusions

21. On the evidence I find that Mr Shad has been in factual possession of the Land since 2003. By laying the concrete base and erecting the stables, laying paths to the stables, keeping horses and maintaining the fences, he has been using the Land as an occupying owner would use it. By carrying out those acts, he has demonstrated to the world at large an intention to possess the Land.
22. The title of the Council to the Land has been barred by limitation. Accordingly, I shall direct the Chief Land Registrar to cancel the application of the Council to close the leasehold title.
23. My preliminary view is that the Council must pay Mr Shad's costs of the proceedings before the Tribunal. The usual rule is that costs follow the event. Mr Shad has succeeded. So far as I am aware, Mrs Shad has not incurred any costs. She was not represented and did not appear at the hearing. Any party who wishes to submit that some different order

should be made as to costs, should serve written submissions on the Tribunal and on the other party by 5pm on 19th October 2018.

BY ORDER OF THE TRIBUNAL

Michael Michell

DATED this 5th day of October 2018

