

## Cash in the Attic

### Boundary Disputes and Adverse Possession of Loft Space

#### PLA Training – Leeds

#### Division of Land – Horizontal and Vertical Divisions

- Land may be divided horizontally or vertically.

#### Horizontal divisions:

- This is normally (but not exclusively) seen in the context of leases. The dispute is often between landlord and tenant. Perhaps the Landlord wants to increase value of the freehold by constructing a new property above the top floor; perhaps the tenant of the top floor wants to extend into the roof space.
- The key thing to bear in mind in those circumstances will be the lease itself, (or the conveyance whereby the land was first divided). The answer may be simple if the demise is accurately defined and delineated
- A rule of thumb?
  - o If there is a horizontal division of the entirety of a floor, so that the entire roof is above just one flat, then the roofspace will form part of the demise.
  - o If the demise is one unit in a larger block, then the demise will not include the roofspace above the individual flat.
- Case law on ownership of roofspace:
  - Cockburn v Smith* [1924] 2 KB 119
  - Graystone v Margulies* (1984) 47 P&CR 472
  - Straudley Investments v Barpress* [1987] 1 EGLR 69
  - Hatfield v Moss* [1988] 2 EGLR 58
  - Davies v Yadegar* (1990) 22 HLR 232
  - Delgable Ltd v Perinpanathan* [2005] EWCA Civ 1724
  - H Waites Ltd v Hambledon Court Ltd* [2014] EWHC 651 (Ch)

#### Vertical divisions:

- *cuius est solam eius est usque ad coelum at ad inferos* ('he who owns the soil owns up to the heavens and down to hell')
- In modern times, the principle cannot be taken to extremes (consider high flying aircraft) but the maxim still applies. In the context of the physical extent of property, as is said in *Lewison on the Interpretation of Contracts (6th Ed - 11.12)*:

*"...a conveyance of land upon which a building stands will normally carry with it the whole of the building. Thus a conveyance of property carried with it a room which projected above ground level into the property conveyed and a cellar below which was only accessible from next door"*

### **Boundary Disputes**

- Anyone looking to understand a boundary dispute would be well advised to consider the excellent judgment of Mummery LJ in ***Pennock v Hodgson [2010] EWCA Civ 873***, which begins with the simple phrase: 'How to construe a conveyance'
  - The court's task is to ascertain the historic boundary line at the date of the earliest conveyance, i.e. when the land was first divided (*Pennock*, para.9)
  - The court must consider what a reasonable person, standing in the position of the parties with the relevant objective factual background knowledge, would have reasonably understood it to mean (*Pennock*, para.13)
  - The parties' subjective beliefs about the position of the boundary are inadmissible (*Pennock*, para.13)
  - A plan "for the purposes of identification only" does not define precise or exact boundaries; precise boundaries must be established by other evidence. There is no reason for preferring a line on a plan over other evidence of a boundary line (*Pennock*, para.9)
  - The topographical features of the land at the time of the conveyance are often determinative of the position of the boundary; as courts frequently state: "*having the conveyance plan in your hand*" to identify the features at the date of the

conveyance is an appropriate method to ascertain the boundary (*Pennock*, para.12)

- Application to Attics: Consider factors such as the conveyance and plan, whether the attic comfortably forms part of one property, the position of internal walls, location of access points, etc.

### **Adverse Possession**

- Factual Possession:

*“Factual possession signifies an appropriate degree of physical control... 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.”*

- Intention to Possess

*“an intention, in one’s own name and on one’s own behalf to exclude the world at large, including the owner with the paper title if he be not himself the possessor, so far as reasonably practicable and do far as the process of the law will allow”*

*Powell v McFarlane (1979) 38 P&CR 452*

### **Registered Land**

- LRA 2002 Sch.6:

#### Paragraph 1

*“...a person may apply to the registrar to be registered as the proprietor of a registered estate in land if he has been in adverse possession of the estate for the period of ten years ending on the date of the application. ”*

#### Paragraph 5

- (1) *If an application under paragraph 1 is required to be dealt with under this paragraph, the applicant is only entitled to be registered as the new proprietor of the estate if any of the following conditions is met*
- (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.*

- Reasonable Belief:

*Zarb v Parry [2012] 1 WLR 1240*

*IAM v Chowdrey [2012] EWCA Civ 505*

*“The question was whether, in all the circumstances, C was reasonable in holding his belief in ownership and whether he should have made enquiries as to whether the disputed land belonged to him*

*The mere fact that the paper title owner challenged asserted ownership by adverse possession was not always sufficient to make the adverse possessor's belief unreasonable”*

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