



REF/2009/0736

**ADJUDICATOR TO HER MAJESTY'S LAND REGISTRY
LAND REGISTRATION ACT 2002**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

HELEN PYE

APPLICANT

and

STODDAY LAND LIMITED

RESPONDENT

**Property Address: Nans Buck Cottage Ashton with Stodday LA2 AJ
Title Number: LAN41385**

Before: Mr. Michael Mark sitting as Deputy Adjudicator to HM Land Registry

**Sitting at: Manchester Civil Justice Centre
On: 8 and 9 June 2010**

Applicant Representation: Mr. Darbyshire, Counsel
Respondent Representation: Mrs. Clark

DECISION

Amendment of general plan of a registered title by the Land Registry to incorporate a small isolated landlocked pocket of land into that title without reference to the general boundaries rule or to the persons actually entitled to that land by virtue of their prior registration, those persons' general boundaries having been inaccurately drawn to exclude that pocket of land, although it had been conveyed to one or more of them some years before.

Cases referred to: Lee v Barrey, [1957] Ch 255; Derbyshire CC v Fallon, [2007] EWHC 1326 Ch; Strachey v Ramage, [2008] EWCA Civ 384.

1. For the reasons given below, I shall direct the Chief Land Registrar to give effect to the application of the Applicant dated 17 December 2008 to alter title LAN41385. The general boundaries of the adjoining titles should be adjusted in a manner agreed between their registered proprietors so as to incorporate the land so removed from title LAN41385.
2. All the land to which this application relates was formerly part of the estate of Lord Ashton. It lies between the public highway and the tidal estuary of the River Lune. In 1931 nearly 500 acres of the estate were transferred to various members of the Pye family. In 1947 all or part of the estate, including all parts with which this application is concerned, was conveyed to a family company, W & J Pye Ltd ("the company"). Over the years, the company sold off parts of the estate. The estate was unregistered land, but, as parts of it were sold off, those parts were registered at the Land Registry.
3. By a transfer dated 14 July 1994 between the company and the applicant, Mrs Morley-Pye, a cottage on the estate known as Nan's Buck was sold to Mrs Morley-Pye. The property sold was described as being for the purpose of identification only edged red on the plan marked "A" annexed to the transfer. A copy of that plan, which is stated to be on a scale equivalent to 1:192, is shown on the following page.
4. It can be seen from the plan that there are two roads leading to Nan's Buck. It can also be seen that the northern boundary of Nan's Buck, as shown on the scale plan, is identified as crossing a stone wall immediately to the south of a gateway marked in red on it. The boundary is well to the front of the actual cottage. At that time, the gateway was a wooden one, but it has since been replaced by a metal gate in the same place. In addition, the cottage has since been extended to the east, but has not been brought any closer to the northern boundary. A photograph taken on behalf of the Land Registry in the course of a survey is reproduced on the page following the plan.
5. The cottage can be seen on the left of the photograph. The ends of the two roads can be seen in the foreground and to the right, and the area in the 1994 plan with "carport" written across it is the gravelled area into which the roads lead. The gateway can be seen in the stone wall some way in front of the house, as shown on the 1994 plan. Through it is other land to which I shall refer in due course. There is then a made up public footpath along what used to be a railway line, which is wide enough to permit vehicles to be driven along it, and immediately on the other side of the footpath is the tidal estuary of the River Lune.
6. The two roads which appear in the photograph and on the plan are private roadways going through woodland on either side of a fish pond within what was then the company's estate. They link up with another estate road at the other end of the fishpond from which access to the public highway is obtained. The 1994 transfer granted a right of way over these private roads to the public highway for the benefit of Nan's Buck, subject to obligations set out in the transfer as to contributions to the cost of repair and maintenance of roadways. It also granted a right of way over and a right to park private motor vehicles on the land coloured green on the plan, subject to a covenant on the part of the purchaser not to use the land coloured green so as to obstruct it in any way so that the vendor or its employees and agents would be unable to gain access through the land coloured green to the land to the north thereof or

through the gateway to which I have referred. On the original plan, the land surrounded by the two roads, the wall and the property conveyed is coloured green.





7. The property transferred by the 1994 transfer was registered at the Land Registry under title number LA745399. The general plan on which the boundaries are marked is said to be to a scale of 1:2500, although it is apparent that the copies which were produced at the hearing were very much reduced in size, and the scale increased accordingly.
8. In 1998, the company transferred a large ring of woodland to another member of the Pye family, Andrew Pye. This ring bordered, inter alia, the southern and eastern boundaries of Nan's Buck and the left-hand side of the roadway shown in the foreground of the photograph above. Andrew Pye then transferred to Mrs. Morley-Pye a small portion of the woodland adjoining the eastern boundary of Nan's Buck, and that was registered in her name under title number LA846131 in July 1999. The general boundary on the title plan to that title shows slightly different boundaries adjoining the eastern boundary of Nan's Buck and the roadway from those which appear on the conveyance plan in 1998. The reason for this is unclear, as there seems to be no obvious reason why Andrew Pye should have wanted to retain these slivers of land. That is a matter which may require reconsideration by the Land Registry and, if appropriate, correction with the agreement of Andrew Pye.
9. Meanwhile, in January 1999, Mrs. Morley-Pye and her parents agreed with the company to purchase a large parcel of land. The agreement is dated to 7 January 1999 and is to purchase the woodland and lake together with the land adjoining the same for the purpose of identification only shown edged red on the plan annexed situate between Nan's Buck and Ashton Hall "TOGETHER with a right of way with or

without vehicles at all times and for all purposes over and along the roadway coloured blue on the plan for the purpose of gaining access to Shaw Plantations and have a track leading through the same TOGETHER ALSO WITH a right of way at all times and for all purposes with or without vehicles over across and along the roadway leading from the main Lancaster to Cockerham road and running to the rear of Ashton Hall” past the properties known as Meldhams and Brookside “and thence joining up with the roadway coloured brown on the said plan”.

10. Shaw Plantations is identified on the plan as woodland along the fishpond. The area edged in red clearly incorporates the roadway on one side of the fishpond, and the fishpond itself. It is unclear from the plan by itself, or at least from the copy plan in the trial bundle, which side of the boundary most of the other road was to fall, although part of it clearly falls within the boundary of the land being sold. That other road is the road shown ending in the foreground of the photograph reproduced earlier in this decision. Also on the copy plan in the trial bundle, no roads are coloured brown. I note that no right of way was to be granted or retained over any part of the other road, although access along it would appear to be necessary to obtain access to that side of the fishpond, and if it was to be used by the vendor a right needed to be retained at least over the area clearly within the land to be sold. The plan used is an old plan, and no scale is indicated on it. The boundary lines are thick, but the land to be conveyed appears to include a triangular piece of land behind the wall in the photograph and behind the gate in the wall.
11. It was then agreed between Mrs. Morley-Pye and her parents that, while the bulk of the land should be conveyed to all of them, the small piece of land behind the wall and gate should be transferred to her alone. After the initial attempts at conveyances were rejected by the Land Registry due to inaccuracies in them, further conveyances were executed in the course of 1999 to make the position clearer. Again the conveyances described the land as being for the purpose of identification only shown red on the plans annexed to each conveyance. The large area of land was then expressed to be together with a right of way with or without vehicles at all times and for all purpose and is over and along the roadway coloured blue on the plan for the purpose of gaining access to Shaw (misnamed “shore”) plantations and the track leading through the same. A further right of way with and without vehicles was also granted across a roadway coloured green on a second plan leading from the main road to the rear of Ashton Hall passed the property is known as a Meldhams and Brookside Ashton with Stodday and then joining up with the roadway coloured blue and brown on the first plan.
12. An examination of the plans referred to in that conveyance shows that the roadway coloured brown is that close to the boundary of the land transferred. It is also plain from the position of the red boundary line that the roadway coloured brown is included in the land transferred. This is further made clear by the fact that not only is there no grant of any right of way over the roadway coloured brown, but also the conveyance is expressly made subject to a right for others to walk over the roadway coloured brown as described by me in the following paragraph. Once again, the plans are to a very small scale, and the red line is very thick. It would appear, however, that where the red boundary line reaches the end of the brown roadway close to Nan’s Buck, it crosses the gravel area which is coloured green on the original 1994 plan. It then continues through the wall to the boundary with the public footpath. As with the

agreement, one part of the brown roadway, close to its eastern end, is well inside the land being conveyed.

13. The conveyance is expressed to be subject to enter only the matters referred to in the 1931 conveyance and “the right for the Vendor and for the children grandchildren and great grandchildren of Robert Turner Pye deceased (a former Director of the Vendor) and their immediate families (being spouses and children) to a right of way on foot only over across and along all footpaths and tracks crossing the property including the track coloured brown on the said plan the purpose of such rights being for recreational and walking purposes”. The “track” coloured brown appears to be the same as the roadway coloured brown.
14. The whole of the contractual price was paid in respect of that conveyance. The land conveyed by this conveyance was registered at the Land Registry under title number LA838573. The general plan, again stated to be on a scale of 1 to 2500 but again significantly reduced at least in the documents produced to me, shows both roadways as within the new title.
15. The remaining triangle of land behind the wall was transferred to Mrs. Morley-Pye for a nominal consideration of £1. It is apparent from the transfer plan that the triangle extended behind Nan’s Buck. That title was registered under title number LA838574.
16. Some years later, the company got into financial difficulties, and ultimately went into liquidation. In 2006, the liquidators sought to sell its land on the Ashton estate. The sale was put in the hands of a selling agent, and it seems that written particulars were produced and were seen both by the Respondent, Stodday Land Ltd (“Stodday”) or its directors acting for an associated company, and by Mrs. Morley-Pye. No copy of those particulars was available at the hearing.
17. A director of Stodday, Mr. Roger Clark, gave evidence at the hearing. He stated that he was shown around the estate by a representative of the selling agent. He was accompanied by his wife, who represented Stodday at the hearing, and by his co-director, Peter Slater. His understanding was that the purchaser would be buying the residue of land still owned by the company. The contract plan, and indeed the conveyance plan, are again old maps on a very small scale, possibly distorted by being shrunk in scale and being photocopied, and again they have very thick boundary lines. Mr. Clark gave evidence that the agent had pointed out in rather vague terms the gravel area outside Nan’s Buck as being possibly owned by the company. Mr. Clark also claimed that he had been told by the agent that the roads leading to Nan’s Buck has been retained by the company.
18. It is plain from a letter dated 2 August 2006 from the liquidators’ solicitors to Stodday’s solicitors that the liquidators had an extremely limited knowledge of the property and would not provide replies to standard pre-contract enquiries. The property was being sold as seen and no warranties or covenants as to title would be given. It is also plain for the reasons I have given that the roads leading to Nan’s Buck had not been retained by the company but had been sold in 1999. If Mr. Clark was told otherwise, he was misled.

19. Mr. Clark made a tender for the property, which was accepted. The contract defines the property as the various parcels of freehold land, totalling approximately 42 acres, at Ashton-with-Stodday as were, for the purposes of identification only, shown outlined in red on the contract plan. It is impossible to make out from the copy of the contract plan produced to me where the boundary lay in the region of Nan's Buck, and it does not appear that any relevant enquiry was made at the time on behalf of the purchaser.
20. The transfer plan was no clearer, but there was a suspicion of a red smudge in the region of the gravel area outside Nan's Buck.
21. The land sold to Stodday was first registered at the Land Registry under title number LAN41385. A full-scale plan on the scale of 1 to 2500 was produced on this occasion by the Land Registry, and did not show any part of the gravel area outside Nan's Buck as included in Stodday's title. Mr. Clark appears to have spent a lot of time sorting out problems relating to the land that Stodday acquired, and disputes with neighbours as to the extent of that land and rights relating to it. It was only some 18 months later that he turned his attention to the gravel area outside Nan's Buck.
22. At this stage, Mr. Clark was acting for Stodday personally in negotiations with the Land Registry, and no solicitors were involved. Mr. Clark succeeded in persuading the Land Registry that there was an area of land outside Nan's Buck that had not been transferred to Mrs Morley-Pye either alone or with her parents. He also succeeded in persuading the Land Registry that this land had been sold to Stodday.
23. The Land Registry appears to have arrived at the conclusion that there was an unregistered piece of land that had never been transferred previously by the company by matching together its own plotting for general boundary purposes of the boundaries the land previously transferred to Mrs Morley-Pye and to her and her parents, and discovering gaps between those general boundaries. It then concluded, without reference to any of the other parties potentially affected, that, because there was a gap shown between the various general boundaries, the land within that gap was not registered to anybody. It proceeded to redraw the title plan to Stodday's land to include most of that gap. By letter dated the 22 August 2008, it wrote to Stodday apologising for the error made by in completing the original registration and for the inconvenience caused. The writer stated that he had now amended the title plan and enclose an official copy for Stodday's records.
24. It is trite law, and in my view should have been apparent to the Land Registry, that the general boundaries shown on their title plans do not determine the precise lines of the boundaries. Indeed statements to that effect normally appear on Land Registry title plans. When unregistered land is registered, or indeed when part of a registered title is transferred, the new title normally comprises all the land included in the conveyance, or transfer of part, and does not include land not included in the conveyance or transfer. That is so regardless of where the general boundary is drawn unless perhaps the error with the general boundary goes beyond what could be described as a boundary error (see *Lee v Barrey*, [1957] Ch 255; *Derbyshire CC v Fallon*, [2007] EWHC 1326 Ch; *Strachey v Ramage*, [2008] EWCA Civ 384).

25. The result of those authorities is that the Land Registry cannot simply look at its general plans and conclude from them that fragments of land are or are not registered simply. It is necessary to look at the underlying transactions to see what is or is not included in a title.
26. The Land Registry's view of the title from its general plans is summed up in the following plan produced by it:



27. In this plan, plot 1 is the cottage and land said to be registered following the 1994 sale to Mrs. Morley-Pye, plot 2 is the land transferred from Andrew Pye to Mrs. Morley-Pye in 1999, following its acquisition by him in 1998, plot 3 is the small piece of land conveyed separately to Mrs. Morley-Pye in January 1999 and plot 4 is part of the remainder of the land conveyed to her and her parents at the same time in January 1999.
28. There are many problems with this plan. First, it appears to show the boundary of plot 1 as coinciding with the corner of the cottage building, although it is plain from both the 1994 conveyance plan and the photograph reproduced earlier that the boundary is several feet away from that corner, and, if the position of the house is correctly shown, into the yellow shaded area. Secondly, the gap between plots 1 and 2 is highly improbable, and almost certainly the result of a mapping error by the Land Registry. Thirdly, the land now purportedly included by the Land Registry in the yellow land includes land in front of its boundary of plot 2 which would appear to be part of the hilly grassed area shown in the above photograph, and which appears to have been conveyed by the company to Andrew Pye in 1998. It is certainly not part of the roadway (which is in plot 4) or of gravelled area coloured green in the 1994 conveyance plan.

29. Most seriously, the person preparing the plan at the Land Registry assumed without good reason that because that is what appeared from his plan (even if it had been accurate) there is an unregistered area of land and that it is the shape shown. It is of course possible that, when transferring its land in portions, a vendor may deliberately or inadvertently retain a landlocked piece of land in the middle. It may even be possible in some circumstances, if it would otherwise be landlocked, for a right of way of necessity to be inferred giving access to it, although in the present case, once the company had sold all its adjoining land, it is difficult to see what purpose this land could serve for which such access would be needed, or why there should be any greater right than one on foot from the nearby public footpath. However, an analysis in the present case of the plans and descriptions on the basis of which the registrations took place would have shown that three of the four numbered plots were registered on using plans for the purpose of identification only with very thick boundary lines, and no proper indication within the conveyances of where the precise boundaries came, while the boundary of plot 1 shown on the 1994 conveyance is differently shaped and does not appear to run on the line shown on the Land Registry plan.
30. Mrs. Clark has suggested on behalf of Stodday that the yellow land represents all or part of the green land in the 1994 conveyance, which was retained to enable the company to get access through the gate in the wall to its land on the other side, and that it was intended still to retain it in 1999 to enable access to be obtained at that point to the river. This was said to be important (a) because the company retained land along the river side, now owned by Stodday, (b) because if there was an emergency on the river access could be needed with vehicles to as close to that part of the river as possible, and vehicles could not get along the footpath, and (c) a right to recover wrecks from the river was a right under the 1931 conveyance retained by the company and sold by it to Stodday with the residue of its land.
31. These problems do not seem to have troubled the Clarks in August 2006, or they would have taken steps at least to try to find out the true position at the time, for example by checking as to boundaries and rights of access with Mrs. Morley-Pye and her parents. In any event, for the reasons I have given, the surrounding land was sold without rights of way being retained, and if there was any residual fragment of land, it was landlocked and of no use for their purposes. It would also have been of no use to the company.
32. Mrs. Morley-Pye and her father gave evidence before me, which I accept, that their intention in purchasing plot 4 was to acquire all the remainder of the land surrounding Nan's Buck, and that that had been explained to the company, and in particular to its director, John Pye, before the purchase. John Pye, who had signed the contract of sale for plot 4 in January 1999, and also the initial versions of the transfers, died some months ago, but he had provided a written statement dated 4 December 2008 confirming that that was also his understanding. All of them state that their understanding was that all of the plots 1 to 4 would have fit together seamlessly without any land are being retained by the company. Mrs. Clark, for Stodday, suggested that the signature was a frail one and that John Pye may not really have recalled what was contained in the statement, which was in any event not supported by a statement of truth. She also contended that I should not readily accept what were in

effect self-serving statements by the various members of the Pye family as to their intentions in 1999.

33. Were there any evidence to indicate that the company had some good reason to retain the land in question or some of it, I would regard these ex post facto statements of intention with some suspicion. However, they accord with the commonsense intention of the parties in circumstances in which the conveyancing left the land in question landlocked and useless had it been retained. I am satisfied that it was the express intention of the parties that no part of the area in question should remain in the ownership of the company following completion of their agreement for the sale of the woodland and fishpond. I am also satisfied that I should construe the very unsatisfactory description of land as extending in the area of Nan's Buck right to the boundaries of the land previously sold.
34. I would add, that even if I had concluded that there was a small landlocked area which had not been sold, I am not satisfied that it was conveyed to Stodday in 2006. Although Mr. Clark gave evidence that his understanding was that the liquidators were selling all the retained land, what is described as being sold is the land edged red on the plan, and it is by no means clear to me either that the land edged red in fact included the disputed land in this case, which would have been an isolated pocket of land, or that it was the intention of the liquidators, in the absence of any evidence from them or of any sale particulars such as those which had been circulated, that all the retained land was to be sold or that the liquidators had any idea that this pocket of land was theirs to sell.
35. The disputed land was wrongly added to Stodday's title by the Land Registry in 2008. It is landlocked land which is not and never has been in the possession of Stodday. It must therefore be removed from Stodday's title plan, and the general boundaries of plots 1, 2 and 4 must be amended in a manner satisfactory to Mrs Morley-Pye, her parents, and, as regards that part in front of plot 2, Andrew Pye.

Dated this 14th day of June 2010

BY ORDER OF THE ADJUDICATOR TO HM LAND REGISTRY