[2018] UKFTT 171 (PC)

REF/ 2016/0737

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

WENDY MASON

APPLICANT

and

LIONEL DANIEL CARRINGTON

RESPONDENT

Property Address: Southside, Hillside Road, London SW2 3EH

Title Number: LN33333

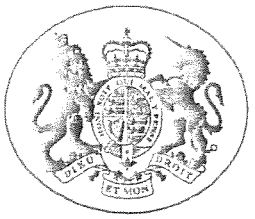
ORDER

The Tribunal orders that the Chief Land Registrar do give effect in part to the application of the Applicant dated 10th May 2016 for alteration of title number LN33333 in so far as it relates to the garage and concreted forecourt area between the garage and the highway but do cancel the application in so far as it relates to the remainder of the land within the title.

Dated this 14th February 2018

Michael Michell

BY ORDER OF THE TRIBUNAL



[2018] UKFTT 0171 (PC)

REF 2016 0737

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

WENDY MASON

APPLICANT

and

LIONEL DANIEL CARRINGTON

RESPONDENT

Property Address: Southside, Hillside Road, London SW2 3EH

Title Number: LN33333

Before: Judge Michell

Sitting at: Alfred Place, London

On: 18th and 19th October 2017

Applicant Representation: Mr Jack Watson, counsel
Respondent Representation: Mr Henry Webb, counsel

DECISION

Cases referred to

Prudential Assurance Co ltd v. Waterloo Real Estate Inc [1999] 2 EGLR 85 at 87
J A Pye (Oxford Ltd) v Graham [2003] AC 419
Tower Hamlets LBC v. Barrett [2005] EWCA Civ 923

Roberts v. Swangrove Estates Ltd. [2007] EWHC 513 (Ch)
Best v. Curtis [2015] UKFTT REF/2015/0130

1. This case concerns an application by Wendy Mason ("Ms Mason") to alter the register to Southside, Hillside Road, London SW2 ("Southside"). Mr Carrington was registered proprietor on 4th August 2015. Prior to that date, the name appearing on the proprietorship register as proprietor of the property was Mrs Mason's father, Mr Gerald Hartley Mason ("Mr Gerald Mason"). Mr Carrington applied to be registered as proprietor under Schedule 6 to the Land Registration Act 2002. Ms Mason says that there is a mistake on the register and applies to have her name substituted for that of Mr Mason on the register.

2. Mr Gerald Mason died on 14th May 1980 at Southside. He left a will dated 29th October 1079. By his will, he appointed his son, Mr Kenneth Mason and the family solicitor, Mr Edward Isaacs to be his executors and trustees. By the will Mr Gerald Mason gave the residue of his estate, after pecuniary legacies to Ms Mason and Kenneth Mason, to his wife, Dorothy Mason. The executors did not prove the will. Dorothy Mason moved out of Southside and went to live in Worcester Park. She died on 10th August 1997. No will or copy will made by Dorothy Mason has been found. Those entitled to her estate on an intestacy are Ms Mason and Kenneth Mason. For many years, no-one applied for letters of administration to the estate of Dorothy Mason. Southside was left empty.

3. By the end of 2003 Mr Carrington had moved into the house at Southside and was living there. The police attended Southside on 6th October 2003 when it was reported that squatters had entered Southside. There was an updated police report dated 14th November 2003 stating that the squatters had not been evicted because Kenneth Mason had not obtained probate to the estate of Dorothy Mason. No further steps were taken to evict Mr Carrington.

4. On 29th May 2014 Mr Carrington applied to HM Land Registry for registration of Southside on the basis that he had been in possession of Southside for ten years prior to the date of his application. The application was supported by a statement made in form ST1 dated 23rd May 2014 and a statutory declaration of the same date. In the ST1 Mr Carrington gave the period of adverse possession as from 6th December 2003. In box 5 under the heading "Acts of adverse possession" he stated that he had lived in the property for the last ten years, taking care of all repairs and bills and that he had complete control over all locks to the property. In box 6 headed "Enclosure of the land", he said that in around 2008 he erected a

fence in the garden and had maintained it since. He gave the name of the freehold owner as Gerald Harley Mason and said that he had had no contact with the freehold owner.

5. In his statutory declaration in support of the application, Mr Carrington stated that he entered Southside towards the beginning of December 2003 through an open back door. He then cleaned the house to make it habitable and secured the property by putting a lock on the front and back doors. He had sole control over the keys and did not give them to anyone.

6. Mr Carrington was registered as proprietor of the Property with effect from 29th May 2014 (the date when his application for registration was received by HM Land Registry). The registration was not effected until August 2015. The principal reason for the delay seems to have been that Land Registry delayed processing the application pending the decision of the Court of Appeal *Best v. The Chief Land Registrar* [2015] EWCA Civ 17, a decision as to the effect on claims to adverse possession of the criminalisation of squatting in residential buildings by s. 144 of the Legal Aid Sentencing and Punishment of Offenders Act 2012.

7. In April 2016 Mr Carrington put Southside on the market for sale by auction. It was offered for sale in an auction sale held on 14th April 2016. The Property was sold at the auction and completion of the sale was set for 11th May 2016. It seems to have been only when Southside was put on the market for sale by auction that Ms Mason discovered that Mr Carrington had been registered as proprietor.

8. Ms Mason obtained grants of letters of administration to the estate of Gerard Mason and to the estate of Dorothy Mason on 27th April 2016. Ms Mason made her application to alter the register by an application form AP1 dated 6th May 2016.

9. Southside is a semi-detached period house with a garage. The house is built on a higher level than the road. The garage sits below the house and behind a parking space accessed directly from Hillside Road. Beside the garage there is a steep garden with steps leading up to the entrance into the house. A path along the side of the house gives access to the rear of the house, the backdoor of the house and the rear garden. I did not inspect the interior of the house.

10. The issues between the parties are

(1) whether the premises were subject to a periodic tenancy in favour of Mr Antoniewicz such that Mr Carrington did not bar the title of the freehold owner;
(2) whether paragraph 12 of Schedule 6 to the Limitation Act 1980 applied to prevent Mr Carrington from barring the title of the freehold owner; and
(3) whether Mr Carrington had factual possession of the garage and driveway of the Property prior to 2007.

Alteration of the Register

11. Detailed provisions as to alteration of the register are set out in Schedule 4 to the Land Registration Act 2002. Paragraph 1 defines "rectification" for the purposes of the schedule as an alteration which

> "(a) involves the correction of a mistake, and
>
> (b) prejudicially affects the title of a registered proprietor".

Paragraph 5 provides that the registrar may alter the register for the purposes of (inter alia) correcting a mistake. Paragraph 6 provides as follows

> "(1) This paragraph applies to the power under paragraph 5, so far as relating to rectification.
>
> (2) No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor's consent in relation to land in his possession unless –
>
> (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake; or
>
> (b) it would for any other reason be unjust for the alteration not to be made.
>
> (3) If on an application for alteration under paragraph 5 the registrar has power to make the alteration, the application must be approved, unless there are exceptional circumstances which justify not making the alteration."

12. Mr Carrington is and was at the date of the application for alteration of the register in possession of the Property. The alteration sought would plainly prejudicially affect his title as registered proprietor. Accordingly, in order to succeed Mrs Mason must show not only that there is a mistake on the register but that Mr Carrington by fraud or lack of proper care caused or substantially contributed to that mistake.

Periodic Tenancy

13. The Applicant alleged that Kenneth Mason let the Property to Richard Antoniewicz. She produced a tenancy agreement dated 24th June 2001. The tenancy agreement is in a standard form for letting a furnished dwellinghouse on an assured shorthold tenancy under Part I of the Housing Act 1980. It is headed "Tenancy Agreement for letting a furnished dwellinghouse on an assured shorthold tenancy under Part I of the Housing Act 1988". The term of the tenancy was expressed to be a fixed term of 2 years 6 months from 24th June 2001. The rent was £1 a month. Clause 2 of the agreement stated

> "This Agreement creates an assured shorthold tenancy within Part 1 Chapter II of the Housing act 1988. This means that when the Term expires the Landlord can recover possession as set out in section 21 of that Act unless the Landlord gives the Tenant notice under paragraph 2 of Schedule 2A to the Act"

14. Ms Mason said in cross-examination that she discussed with Kenneth Mason the grant of a tenancy to Mr Antoniewicz before the tenancy was granted. She said that it was always intended that Mr Antoniewicz would buy Southside and live there with his family.

15. In a statement made on 6th May 2016 Mr Antoniewicz said that he had been granted a ixed 2 1/2 year tenancy by Kenneth Mason and that the tenancy continued as a periodic tenancy. He also stated that after squatters entered Southside, he provided a statutory declaration to the police explaining his interest in the property. He said that the police attended Southside in early 2004 and provided the squatters with documentation, which he presumed included the tenancy agreement and the statutory declaration. He said that he was later told by the local police that "the squatters' solicitor pointed out that my tenancy had expired". He said that he protested that it was a matter of fact that the expired tenancy had turned into a periodic tenancy which is lawfully valid but this was not accepted".

16. Three police reports were produced in evidence. The first is a dated 6th October 2003. It reads

> "The house is very overgrown the house has been unoccupied for about three years. Earlier this evening a MALE with a FEMALE entered the house and said they were squatting. The owner of the house is a Mr MASON and I will try to get home address details. I think that he resides in SURBITON. His late mother resided in the house".

The second is dated 14th November 2003. It includes the following

"The owner of the property is MR KENNETH MASON ... The situation as regards the legal position of the squatters is as follows. the eviction of the squatters using sec 677 CRIMINAL LAW ACT 1997 sec 12A did not take place at 1500. 13/11/03 because probate has not been granted on the property as it was his late mothers. The person dealing with this is giving to a lawyer to investigate".

The third note is dated 25th November 2003. It includes the statement that the office had called Mr Mason to give him an update on the situation, being that "there are about 12 people in there and people are coming and going".

17. There is no mention in the police notes of Mr Antoniewicz or of his having a tenancy agreement. Mr Antoniewicz said in cross-examination that he recalled going to a firm of solicitors called David Goodwin & Co. with Kenneth Mason to make an affidavit to give to the police. He then said he would think that the police would have had a copy of the tenancy agreement. He said that in March or April 2004 the police had told him they could not do anything to evict the squatters because his tenancy agreement had expired and that was his last personal attempt to have the squatters removed. Though Mr Antoniewicz's evidence in his witness statement was that the squatters first moved in in December 2003 while he was on holiday in Poland, he accepted in cross-examination that the police notes gave the true date when the squatters moved in. No copy of an affidavit or statutory declaration was put in evidence. The police had been asked for their records and produced the three notes but no other notes or documents.

18. Counsel for Mr Carrington put it to Mr Antoniewicz that he had not signed the tenancy agreement in 2001 but had done so in 2003 in an attempt to make it easier to remove the squatters. Mr Antoniewicz denied this.

19. Counsel for Mr Carrington submitted that I should not accept that the tenancy agreement was made on the date appearing on it. He relied on a number of matters; the lack of evidence from Kenneth Mason as to the grant of the tenancy agreement; the lack of any detailed proper evidence of the work Mr Antoniewicz did while he was supposedly tenant; the lack of evidence of the rent having been paid or of Mr Antniewicz having paid any utility bills; and the lack of any real explanation as to why a tenancy agreement of this length should have been granted. Counsel for Ms Mason on the other hand, submitted that it was not

credible that a tenancy agreement would have been created and backdated so that it expired just after the squatters went in.

20. Although I have been concerned by the evidential omissions to which counsel for Mr Carrington referred, I am satisfied on the balance of probabilities that the tenancy agreement was made between Kenneth Mason and Mr Antoniewicz and that it was not backdated. Mr Antoniewicz said that it was not backdated. Ms Mason said that she discussed the making of the tenancy agreement with her brother before it was made. It would be a very serious matter to produced a fraudulent document to the police, to HM Land Registry and to the Tribunal and to give false evidence to the Tribunal as to when it was made. I do not consider the evidence would justify me in reaching the conclusion that the tenancy agreement was backdated.

21. On the expiry of an assured shorthold tenancy, a periodic tenancy arises under s. 5 of the Housing Act 1988. It is common ground that the tenancy agreement in favour of Mr Antoniewicz did not create an assured shorthold tenancy for two reasons. Firstly, Mr Antoniewicz did not occupy Southside as his primary residence (as required by s. 1 Housing Act 1988). Mr Antoniewicz did not occupy as a residence at all. Secondly, the rent payable under the tenancy agreement was too low for the tenancy to qualify as an assured shorthold tenancy.

22. Counsel for Ms Mason submitted that because the tenancy agreement referred to itself as an assured shorthold tenancy and "expressly incorporated the provisions of the Housing Act 1988", the parties intended to incorporate the rules set out in the Housing Act 1988 into their bargain, irrespective of whether those rules would have applied by operation of law. He submitted that the effect was to create a contractual tenancy for a fixed term and continuing on the expiry of the fixed term, as a monthly periodic tenancy.

23. I do not accept that the tenancy agreement created by contract a periodic tenancy arising on the expiry of the fixed term. An assured shorthold tenancy is a creature of statute. Parties cannot create an assured shorthold tenancy unless the statutory requirements for an assured shorthold tenancy to arise are satisfied. The tenancy agreement could not create an assured shorthold tenancy simply by stating that it created an assured shorthold tenancy. There is nothing in the tenancy agreement to demonstrate an intention of the parties that if the

statutory requirements for an assured shorthold tenancy to arise were not met then the tenancy should be for a fixed term followed by a periodic tenancy of the sort that would have arisen had the tenancy been an assured shorthold tenancy.

Does Land Registration Act 2002 Schedule 6 para 12 apply?

24. Paragraph 12 of Schedule 6 provides

> "A person is not to be regarded as being in adverse possession of an estate for the purposes of this Schedule at any time when the estate is subject to a trust unless the interest of each of the beneficiaries is an interest in possession".

25. The editors of Ruoff and Roper on the Law and Practice of Registered Conveyancing at 33.027 suggest it is arguable that where land is held by personal representatives for beneficiaries under the will who have no proprietory interest in the land, there is a trust for the purposes of Schedule 6.

26. In *Best v. Curtis* [2015] UKFTT REF/2015/0130 the Respondent argued that because the registered proprietor was dead and her estate was unadministered, the estate was subject to a trust for the purposes of Schedule 6. Judge Cooke rejected this argument.

> "...under normal circumstances while an estate is being administered it is held by personal representatives. They are not trustees in the conventional sense. For a trust to exist there must be identifiable property, a trustee and identifiable beneficiaries who can enforce the trustee's duties. The Applicant cites *Green v. Russell* [1959] 2QB 226, at 241 but authority is scarcely needed.
>
> Executors (of a testate estate) and administrators (of an intestate estate) are fidicuaries but they do not hold the property as trustees. A trustee holds the legal title and the beneficiaries hold the equitable title. In *Commissioner of Stamp Duties (Queensland) v. Livingstone* [1964] 3 AC 694, at 707: "... whatever property came to the executor *virtute officii* (by reason of his office) came to him in full ownership, without distinction between legal and equitable interests". The Applicant cites *Williams Mortimer and Sunnucks onExecutors, Administrations and Probate, 20th edition*, paragraph 81-02 which explains that executors are treated by the courts as trustees "for certain purposes and in some aspects", in particular so as to enable them to be held liable as fiduciaries for breach of duty. But the executors or administrators are not trustees in any usual sense of an unadministered estate. The trust fund is be definition

unidentifiable until the administration ends. The beneficiaries are likewise unknown until the administration is brought to an end by the assenting of property to those entitled".

Judge Cooke then went on to consider whether Schedule 6 could be referring to a trust in an unusual sense.

> "Might paragraph 12 be referring to a trust in some extended sense? I think not. Paragraph 12 assumes a trust that has beneficiaries. The Limitation Act 1980 uses the extended definition of a trust and trustee found in the Trustee Act 1925, at section 68, so as to include personal representatives. But the 2002 Act does not employ that extended definition either explicitly or by reference; had Parliament intended an extended definition it would have said so as it did in the Limitation Act 1980 and the Trustee Act 1925"

27. *Best v. Curtis* as a decision of the First-tier Tribunal is not binding on me. Furthermore, as counsel for Mrs Mason pointed out to me, it was a case in which there had been no personal representative throughout the period of adverse possession. The property had been vested in the Public Trustee by virtue of the Administration of Estates Act 1925 s. 9(1) and by s. 9(3) the Public Trustee is not subject to any duty or liabilities in respect of the property so there is no trust. However, I agree entirely with the decision of Judge Cooke for the reasons she gave. I am comforted in this view by the fact that Morgan J. sitting as a judge of the Upper Tribunal refused permission to appeal the decision of Judge Cooke on all grounds, including on the grounds that her decision on whether there was a trust for the purposes of schedule 6 where the property was held by personal representatives. A personal representative is not a trustee and does not hold the property on trust for the purposes of Schedule 6 paragraph 12 of the 2002 Act.

Possession of the garage and forecourt

28. 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).

29. 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).

30. 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)*.

31. 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

32. The question whether possession of part constitutes possession of the whole was considered by Lindsay J. in *Roberts v. Swangrove Estates Ltd.* [2007] EWHC 513 (Ch). At paragraph 63, Lindsay J. said

"There is thus ample authority for the proposition that acts on one part of an area may be treated as constituting possession of the whole are provided that there is "such a common character of locality as would raise a reasonable inference" that, if a person were possessed of one part of it as owner then he would so possess the whole of it". That was a case concerning a claim to title to thousands of acres of foreshore and part of the bed of a tidal estuary. It is of little practical assistance in this case. In *Powell v. McFarlane* ... Slade J said at p. 471

"Whether or not acts of possession done on parts of an area establish title to the whole area must, however, be a matter of degree. It is impossible to generalise with any precision as to what acts will or will not suffice to evidence factual possession".

Use of the Garage – Evidence

33. Mr Antoniewicz said that he had a Mercedes Roadster classic motor car from 1959 stored in the garage from before Mr Carrington went into the house and that he parked a Citroen hatchback motor car on the drive in front of the garage. The garage was locked but Mr Antoniewicz described the lock as not being secure. The Mercedes was a valuable car, being worth about £20,000 in 2004. He said that by having another car parked on the drive, he prevented anyone else getting into the garage. Mr Antoniewicz said that the Citroen was removed by someone; he did not know by whom and could not recall when it was taken. He said that he was in the country when the Citroen was taken but on holiday in Poland when the Mercedes was moved. He said that the Citroen was not taken at the same time as the Mercedes was moved. The Mercedes was moved into the yard of Mr Antoniewicz's father's house at 4 Hillside Road in August 2007, where Mr Antoniewicz lived. 4 Hillside Road is diagonally opposite the Property.

34. Mrs Suzanne Twerdochlib lives at 2 Hillside. She did not know Mr Antoniewicz by name in 2003 but she knew him by sight. His father used to talk to Mrs Twerdochlib's father. In October 2002 she started walking her son to school at Streatham Wells Primary School in Priory Road. Her route went past the Property. She gave evidence of having seen Mr Antoniewicz using a key to open the garage. On an occasion in 2006 soon after Mrs Twerdochlib's father had died, Mrs Twerlochlib saw Mr Antoniewicz at the garage and stopped to tell him of her father's death. On that occasion, Mrs Twerdochlib remembers Mr Antoniewicz coming out of the garage and shutting and locking the garage doors. The garage doors were white wooden doors, hinged at the side. Mr Antoniewicz had difficulty shutting the doors and Mrs Twerdochlib saw him pushing against them in order to lock them.

35. Mr Anthony Noe is a nephew of Mr Antoniewicz and the grandson of Mr Antoniewiciz's father. Mr Noe gave evidence that he frequently visited his grandfather at 4 Hillside Road and spoke to Mr Antoniewicz often, though he did not get along too well with his uncle. He recalled on one occasion seeing that the car kept on the drive outside the garage had been taken and the doors of the garage had been pulled open. There was a car transporter lorry parked in Lanercost Road, a side turning off Hillside. Mr Noe saw Mr Carrington and a man he believed to be the driver of the car transporter looking at the Mercedes roadster in the garage and talking. Mr Noe got the impression that Mr Carrington was trying to sell the Mercedes to the driver of the car transporter. Mr Noe intervened and had an alteraction with Mr Carrington about who owned the Mercedes. The transported driver then left. Mr Noe was with his brother-in-law, Mr Rafal Mierzejewski. Together they pushed the Mercedes into the yard at 4 Hillside. Mr Noe said that this occurred in August 2007 when Mr Antoniewicz was abroad.

36. Mr Arthur Vince is a friend of the Antoniewicz family and a driving instructor. He gave evidence that Mr Antoniewicz showed him a Mercedes car parked in the garage. Mr Vince taught Robert Antoniewicz, the son of Mr Richard Antoniewicz) how to drive. Robert Antoniewicz passed his driving test in 2006 and Mr Vince said the Mercedes was still in the garage at that time. Mr Vince also taught Mr Noe's wife, Aneta how to drive. This was either in late 2006 or in 2007. At this time Mr Vince said that Mercedes was still in the garage. Mr Vince said that he saw the Mercedes was still in the garage because on several occasions the garage doors were open and he could see the car in the garage. Mr Vince said

that as a driving instructor he was a trained observer and saw everything around him.

37. Mr Carrington accepted that the Mercedes was in the garage when he first went into the Property but he said that it was removed in 2004. He said that he believed the Mercedes was not in the garage in 2006. Mr Carrington said that he did not go in to use the garage every day but he did go in on some occasions because the stopcock for the mains water to the Property is in the garage. He said that the garage was open from when he moved into the Property until about 2012 when it was boarded up by builders working at the neighbouring property.

38. Jurgita Paulaviciute is Mr Carrington's girlfriend. She was able to give evidence about the garage only from the summer of 2008 onwards. She recalled a red van belonging to Greg Stazka being parked on the driveway in front of the garage. The garage itself was closed off. It was not then possible to walk into the garage.

39. Sr. Miguel Roig Adalid lived at the Property for a period 2004 to 2005 and came back to live in the Property in 2013. His evidence was that he went into the garage a few times for a few seconds and did not then see anything in the garage. He said that the garage door was broken and left open.

Did Mr Carrington have possession of the garage and forecourt?

40. In this case, I consider that the acts of taking possession of the house cannot be regarded as constituting possession of the garage and garage forecourt or driveway as well. The garage cannot be accessed from within the house. It is not enclosed with the house and garden by any wall or fence or gates. Access to the house does not involve passing over the garage forecourt; there is a separate staircase to the side of the forecourt. The physical configuration means that the paper title owner of anyone else looking at the house and the garage would not conclude from knowing that a squatter had taken possession of the house that the squatter was also in possession of the garage. That would be a matter to be ascertained separately.

41. It is clear to me that Mr Carrington had not been in possession of the garage and forecourt for 10 years at the date he was registered as proprietor. Mr Carrington did not ever take possession of the garage. On his own account, the garage was open and empty. His

going into the garage on a few occasions to access the water stopcock cannot amount to possession of the garage. Mr Carrington did nothing at all on the garage forecourt. I accept that Mr Antoniewicz had a car parked in the garage and another on the forecourt for some time up to 2007. I also accept that when Mr Antoniewicz had the Mercedes in the garage, he kept the garage doors locked. There is good evidence that the car was there in 2006. Mr Antoniewicz, Mr Noe, Mrs Twerdochlib and Mr Vince all said it was. Mrs Twerdochlib had a good reason for remembering that she saw Mr Antoniewicz locking the garage doors in 2006. I accept her evidence and the evidence of Mr Noe and Mr Vince that the Mercedes was in the garage in 2006 and 2007. It is not necessary for me to decide whether the Mercedes car was there in 2004 when Sr. Roig Adalid said the garage was empty. The presence of the Mercedes in the garage in 2006 and 2007 and the fact that the garage doors were locked when the Mercedes was in the garage means that Mr Carrington cannot have been in possession of the garage for a period of 10 years prior to the date of registration.

Should the register be rectified?

42. There is no evidence that Mr Carrington was in possession of the garage and the forecourt at the date of the application to alter the register. The garage is empty and the doors have been blocked, not by Mr Carrington but by builders working on the neighbouring property. Paragraph 6(2) of Schedule 4 to the Land Registration Act 2002 applies to an alteration "affecting the title of the proprietor of a registered estate in land ... **in relation to land in his possession".** As Mr Carrington is not in possession of the garage and forecourt, the provisions of paragraph 6(2) of Schedule 4 to the Land Registration Act 2002 do not apply.

43. Paragraph 6(3) provides that if on an application for alteration under paragraph 5 the registrar has power to make the alteration, the application must be approved unless there are exceptional circumstances which justify not making the alteration. The registrar has power to make the alteration in this case. There are no exceptional circumstances here which justify not making the alteration. Exceptional circumstances are circumstances which are out of the ordinary and those circumstances must be such as to make it just not to alter the register. The fact that the garage is constructed partially under the house is not exceptional in my judgment and does not make it just not to alter the register.

44. Had the provisions of paragraph 6(2) of Schedule 4 applied, I would have held that the title should be altered because Mr Carrington had caused or substantially contributed to the mistake on the register by lack of proper care. He applied for possessory title to the whole of the land within Title LN33333. His application gave the impression that he had been in possession of the whole of the land within that title for the requisite period. He could have applied for possessory title of part of the land within that title, excluding the garage and forecourt. To not do so was at least careless. By not doing so, he caused or substantially contributed to the mistake on the register.

Conclusion

45. Mrs Mason has succeeded as regards the garage and forecourt. Mr Carrington was not and is not in possession of the garage. The register should be altered so that Mr Carrington ceases to be the registered proprietor of the garage and forecourt and Mrs Mason is registered as proprietor of the garage and forecourt.

46. Mrs Mason has not succeeded as regards the remainder of the land in the title. The property was not the subject of a tenancy for any part of the period of ten years prior to the registration of Mr Carrington as proprietor. The Property was not held on trust for any part of the same period.

Costs

47. Mrs Mason has succeeded in part of her application and failed in part. Both parts of the application took up approximately an equal amount of time at the hearing and would have involved the incurring of approximately equal sums in costs. In the circumstances, my preliminary view is that it would be just to make no order as to costs. Any party who wishes to submit that I should make some different order as to costs should file with the Tribunal and serve on the other party written submissions as to costs by 5pm on 1stMarch 2018.

DATED this 14th February 2018

Michael Michell

PROPERTY CHAMBER LAND REGISTRATION

BY ORDER OF THE TRIBUNAL