



[2018] UKFTT 0719 (PC)

REF//2016/1056

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

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

**(1) SUZANNE IRENE DIGBY ROBERTS
FRAZER DIGBY ROBERTS**

APPLICANT(S)

and

**(1) DAVID METCALF HOLLAND
(2) CHRISTINE MARION HEMMINGS**

RESPONDENT(S)

**Property Address: Land to the West of Penybryn, Clydey, Pembrokeshire
Title Number: CYM644168**

**Before Judge Nigel Thomas
Sitting at: Llanelli County Court
On: 13 September 2018**

**Applicant Representation: Trefor Lloyd Direct Access
Respondent Representation: Matthew Wales instructed by Agri Advisor Solicitors**

DECISION

1. The Applicants are a married couple Fraser Digby-Roberts and Suzanne Irene Digby-Roberts who is also referred to in some of the documents as Susanne Irene Larkey (At the hearing she was referred to as Mrs Digby-Roberts and I will refer to her as such in this Decision). By an application dated 17 March 2015 for First Registration made in Form FR1 dated 13 March 2015 the Applicants applied to be registered as absolute freehold proprietors of two small pieces of land (“the Property”) at Llain and Blaenffynnon Fach Pembrokeshire shown edged red on the plan attached to the Application.
2. Mr Fraser Digby-Roberts is the registered freehold owner of adjoining land immediately to the North registered under number WA623021 whilst Mrs Digby-Roberts is the registered proprietor of land immediately to the South registered under title number CYM2234.
3. The co-extensive extent of the Property is affected by a caution against first registration under title CYM551474, of David Metcalf-Holland one of the Respondents. I should note at this point that the Respondents expressly do not claim any interest in the Property.
4. By a letter dated 15 May 2015 JCP Solicitors lodged a letter of objection on behalf of Mr Metcalf-Holland on the basis that there was a pending application by him in respect of a claimed right of way over the Property. This ground of objection in my judgment provides no basis in law to objecting to registration of what forms part of an alleged servient tenement. This point was evidently accepted by Mr Metcalf-Holland as at the hearing it was not pursued on his behalf, although this ground of objection had been repeated in a letter dated 16 June 2016 from the Objectors’ current solicitors Agri Advisors to the Tribunal.

5. For the purposes of the Hearing the Respondents were represented by Mr Matthew Wales who, in my judgment, correctly dropped any objection based upon an alleged right of way and instead put the Objectors' case thus "The Respondent [sic] does not claim any competing title, simply that the Applicants have not established title to the land in question". This was the ground of objection raised in Agri Advisors' letter dated 31 March 2016.
6. The Respondents had by an application dated 10 November 2014 applied to register a prescriptive easement over servient land which included the Property. The Application was by order dated 8 December 2015 struck out by Judge Brilliant and he further directed the Chief Land Registrar to reject any future applications for such an easement.
7. For the reasons which appear in this Decision I consider the Objectors' objection to this Application to be wholly misconceived.

The Site View and Hearing

8. There was a site view on the 12 September 2018 and the hearing took place on 13 September at Llanelli County Court.
9. I am grateful to the Applicants for providing access to the Property and the Respondents for allowing me to park at their property, Penybryn Farm, Clydey, Llanfyrnach.
10. The Property comprises two small parcels of land coloured Blue and Pink shown conveniently on the plan which was at page 111 of the Bundle. The Blue Land (as I shall call it) was bounded to the North by land registered in the name of Mr Digby-Roberts and to the South by land registered in Mrs Digby-Robert's name. To the West

lies the public highway and to the East the Pink Land. The Pink Land is to the North and South likewise bounded by the Applicants' respective land holdings. To the East lies a substantial hedge bank typical of a type found in Pembrokeshire separating it from the Respondents' land.

11. This hedge bank which runs roughly from the south east to the north west and is clearly a boundary feature between the Applicants' land and the Respondents' land, and is treated as such by the parties.
12. It is not possible to discern the metes and bounds of either the Blue Land or Pink Land on the ground as they are small areas of land indistinguishable from the surrounding land comprised in the registered titles of the Applicants. The Pink Land has no connection to the Respondents' land at Penybryn Farm from which it is separated by the hedge bank. The area is overgrown and not at present used for agriculture as is the Applicants' other land.
13. I find that upon inspection the Property appears to the eye to be part of the Applicants' land within the boundary of their respective properties which is demarcated by the hedge bank to the east, which, as I have mentioned above, is a substantial bank topped by a hedge. This hedge is shown in the photographs contained in the bundle. The Applicants' land along its western boundary adjoins the highway.
14. The Property forms the western end of a farm track shown on the OS plans and to be seen in the photographs. It gives access to the public highway just opposite Llain which is where Mr and Mrs Digby-Roberts live. This farm track is a sunken track as it runs alongside the boundary hedge bank running south eastwards towards the Respondents' partially constructed house and outbuildings.

15. The track was used to access the highway at the Llain end by the Respondents pursuant to an agreement made between (1) Mrs Digby-Roberts and (2) Mr Metcalf [Holland] dated 14 July 2010. The access onto the highway can be seen in the photographs at pages 384 and 385. However since the expiration of the Agreement the access at page 385 has been closed up, the fencing visible in the photograph removed and the area comprising the Property is now overgrown. In 1992 the Property formed the only feasible access from the highway to the land purchased by Mr Digby- Roberts lying to the north of the Property. Nowadays access is via a gate lying to the south upon land which Mrs Digby-Roberts acquired in 2000 from the estate of Granville Morgan.
16. At the hearing evidence for the Applicants was given by Mrs Digby-Roberts and Mr Ieuan Thomas, the son of the late Mr Vernon Thomas the executor of the estate of Granville Morgan and for the Respondents by Mr Metcalf-Holland together with witness statements of Roy Thomas and Brian James. I read both these statements. They were both irrelevant as they concerned the use of the Track over the Applicants' land. They contained no matters concerning the question of title to the Property.
17. Most of the contents of the Applicants' and the Respondents' witness statements were inadmissible in that they included opinion evidence, argument and irrelevant material rather than statements of fact. In oral evidence Mrs Digby-Roberts told me that prior to the purchase by her husband of the land of which he is now registered owner in 1992 all the land currently registered in their respective names was owned and farmed by Granville Morgan. Mr Morgan sold part of Llain and part of Blaenffynnon Fach to Mr Digby-Roberts by a Transfer dated 29 January 1992

18. The land owned by Mr Morgan was known as Llain, Clydey, Llanfyrnach Pembrokeshire and an adjoining farm Blaenffynnon Fach. He also owned another farm. He ran all 3 farms as a single unit.
19. The track was used in 1992 by a Mr Watts who was the Respondents' predecessor in title as owner of Penybryn but only rarely at that time, as he was winding down his farming activities.
20. Mrs Digby-Roberts purchased her land from Vernon Thomas by a TR1 dated 8 November 2000. Granville Morgan had died in 1999.
21. Mrs Digby-Roberts said that she had assumed that both the Blue Land and the Pink Land had been transferred to her husband by Mr Morgan in 1992.
22. Mr Ieuan Thomas, the son of Vernon Thomas (who as I have noted already was the executor of Mr Morgan), gave evidence to the effect that Mr Vernon Thomas had thought he conveyed all the land to the East of the highway vested in Mr Morgan at his death to Mrs Digby-Roberts by the Transfer dated 7 November 2000 and that on the winding up of the administration of Mr Morgan's estate all the real property comprised in it was declared to have been disposed of. That as a statement is not determinative in construing the 2000 Transfer although it is admissible as to Mr Thomas' state of belief. What however is significant is that Mr Thomas, if not explicitly, but certainly by implication, indicated that had he been asked as the representative of Vernon Thomas' estate he would have provided a confirmatory Transfer of all the land remaining in the estate of Granville Morgan (if any) lying to the East of the highway at Blaenffynnon Fach and Llain.

23. The other witness to give evidence was the First Respondent. He put forward no positive case and had no relevant factual evidence to give so Counsel for the Applicants rightly in my view restricted his cross-examination. Mr Metcalf-Holland was not an expert and he admitted to having no expertise in the historical interpretation of plans.

The Law

24. Both Counsel have in their helpful skeleton arguments drawn to my attention authorities Cameron v Boggioano and Another [2013] EWCA Civ 157 and Wigginton & Milner v Winster Engineering [1978] 1 WLR 1462 and I accept the relevance of both. In particular Buckley LJ in the latter case reminds us that

“It is from the conveyance as a whole that the intention must be ascertained.”

The Documents

25. This much is clear from the documents namely that the paper title of the Property is either with the Applicants or the estate of Granville Morgan.
26. This Application turns on the documents and their true construction and in particular the Assent by Mr P.J. Morgan in favour of Miss M. Morgan and Mr Granville Morgan dated 2 November 1953 which the Applicants say is the root of title to the Pink Land the Conveyance dated 16 October 1956 between (1) the personal representatives of BT Rees and (2) Granville Morgan which is the root of title of the Blue Land, the Transfer of 29 January 1992 between (1) Mr Morgan and (2) Mr Digby-Roberts and the Transfer of 8 November 2000 between (1) Vernon Thomas and (2) Mrs Digby-Roberts.

27. The question therefore with regard to the Pink Land is whether it formed part of the farm and lands known as Blaenffynnon Fach as described in the Assent. As is generally the case with an Assent there is no plan attached or drawn onto the Assent. It seems to me that it is a perfectly good root of title and the Land Registry accepted that it was in that upon the Transfer of 2000 to Mrs Digby-Roberts of "All that dwellinghouse land and premises known as Blaenffynnon Fach, Clydey, Llanfyrnach ... being the remainder of the property comprised in an Assent dated 2 November 1953 ..." it registered Mrs Digby-Roberts with all the land to the South of the Pink Land. It did not register her with the Pink Land as the plan attached to the Transfer did not include the Pink Land, although it was attached for "identification only" it is in my judgment clear that the Pink Land did until 1992 form part of Blaenffynnon Fach. I am of this view because all the land in the vicinity of the Property formed either part of Llain or Blaenffynnon Fach both of which to the East were bounded by the hedge bank. For the reasons which I shall come onto it was not part of Llain so it had to be part of Blaenffynnon fach. There is no other competing title. I can find no evidence that a Mr Howell as suggested by the Respondents ever owned any land concerned with the Property at any material time.
28. I accept the evidence of Ieuan Thomas, who was born in 1969, that so far as he can recall the Property and the surrounding land belonged to and was farmed by Mr Morgan, which reinforces so far a necessary that the Pink Land formed part of Blaenffynnon Fach.
29. The Blue Land clearly formed part of the title of Llain as that much is clear from a conveyance dated 1 November 1912 made between (1) Mr Lewis-Bowen of the Clynfiew Estate and (2) Daniel Martin. The description of Llain in that conveyance both verbally and by reference to the plan is precise. The description of Llain

contained in that conveyance and the plan was replicated in the 1956 Conveyance.

The Blue Land forms part of enclosure Pt 1764 lying to the East of the highway, and it was conveyed to Granville Morgan in 1956.

30. The Rule 72 Transfer of 29 January 1992 by Mr Morgan to Mr Digby-Roberts contains the following parcels clause

“ALL THOSE pieces or parcels of land forming part of Llain Clydey and Blaenffynnon Fach, Clydey, and for the purposes of identification only ...”

Transferred to Mr Digby-Roberts was the dwelling house and farmstead and neighbouring fields including the enclosure on the East side of the highway but the plan apparently excludes the Blue Land but includes part of the Pink Land.

31. The wording of this Rule 72 Transfer seems to me to include the Pink Land as having found the Pink Land did form part of Blaenffynnon Fach then the wording “land forming part of ... Blaenffynnon Fach” can only refer to the Pink Land. On any objective basis it cannot have been intended that some of the Pink Land would be transferred and some not. The area of land is so small and the small scale of the plan together with the width of the lines drawn on it sufficient to indicate that the intention of the parties was to transfer the Pink Land in 1992. The wording employed in the parcels clause makes no sense otherwise and further the Pink Land provided in part access off the highway to the land transferred to Mr Digby-Roberts. If I am wrong about the extent of the Pink Land transferred by the 1992 Transfer then any remaining part was transferred by the 2000 transfer.

32. I reach the same conclusion with regard to the Blue Land. Objectively construed Mr Morgan had no need to retain ownership of the Property which formed the end part of

the old track which Mr Watts had used. He accessed the land retained by him to the south (now registered in Mrs Digby-Roberts' name) via a gate further south and much closer to his home at Blaenffynnon Fach. On the other hand the only accessway to the land acquired by Mr Digby-Roberts by the 1992 Transfer was over the Property along this part of the track.

33. Applying the test laid down in Wigginton and Milner v Winster Engineering construing the Conveyance as a whole and the admissible extraneous evidence I find that it was the objectively ascertainable intention of the transferor to convey to Mr Digby-Roberts the Property comprising as it did an access to the land he purchased from Mr Morgan on the East side of the highway opposite Llain which otherwise would have been effectively landlocked. No attempt was made to grant a right of way to this transferred land which would have been necessary had the parties not thought the 1992 Transfer included the Property.
34. The quality of some of the plans is unfortunately not of the best and I have concluded accordingly that extraneous evidence from the site view in particular was admissible. So for instance the plan attached to a Statutory Declaration of Granville Morgan dated 13 March 1998 contains two notable mistakes. By the Statutory Declaration Mr Morgan purported to show on the plan the extent of the land subject to the Assent dated 2nd November 1953. However, the plan shows part of the Llain land acquired by Mr Morgan in 1956 (namely the triangular shaped piece to the south of the old track tapering to a point marked approximately by a telegraph pole near to the highway) as being part of the alleged assented land; that clearly is wrong. Secondly the red line purports to exclude from the assent the whole of the length of the track from the Penybryn gate to the highway opposite Llain. That again is an error as that part of the track to the east clearly belonged to Mr Morgan who sold the major portion of it to

Mrs Digby Roberts in 2000 and in respect of which she is now the registered proprietor. The plan therefore cannot be relied upon and it is apparent from it that it was not prepared with much care as the red line is thick and was applied freehand. I note that Mr Morgan made the declaration in 1998 when he was aged and he died the following year. I therefore hold that the Plan does not accurately depict the extent of the land vested by the 1953 Assent.

35. I shall therefore grant the Application and direct the Chief Land Registrar accordingly.

ORDER

1. The registrar is directed to give effect to the Applicants' application dated 17th March 2015 as if the Respondents' objection had not been made.

Dated this 15 day of October 2018

By order of the Tribunal

Nigel Thomas

Nigel Thomas

