Adverse possession - what amounts to an interruption of the squatter's possession for the purpose of determining whether the squatter is entitled to apply to be registered as proprietor?

Key points

- A squatter who has been in adverse possession of registered land for 10 years may apply to be registered as proprietor of that land
- The paper owner may interrupt the squatter's period of adverse possession by re-taking possession of the property
- The period of interruption may be relatively short, but nothing less than exclusive physical control by the paper owner will suffice in order to start time running again from zero

Facts of Zarb v Parry

Like our analysis on easements, Zarb v Parry concerns a dispute between neighbours which got out of hand. In this case the ownership of a strip of land measuring 890 square feet was in question.

In 1992, the claimants' predecessor in title had sold part of his garden to the defendants' predecessors in title. The boundary as shown on the plan attached to the transfer did not match the position on the ground. The buyers under the transfer thought that the boundary was a pre-existing hedge. However, the hedge was situated 12 feet south of the paper boundary.

Both properties changed hands: the seller's property was acquired by Mr & Mrs Zarb, and the buyer's property by Mr & Mrs Parry. In 2007, the Zarbs sought to take back from the Parrys the strip of land between the hedge and the paper boundary. They cut down a small tree and removed a fence erected by the Parrys. The Zarbs then used a surveyor's tape to mark out the paper boundary, and began to nail new fence posts along it. They were on the property for about 20 minutes before the Parrys discovered them and required them to leave.

The court ruled that the true boundary was that shown on the plan annexed to the 1992 transfer. However, the Parrys claimed that, in that case, they were nonetheless entitled to the title to the strip of land by adverse possession. In order to show this, they had to demonstrate (among other things) that, together with their predecessors in title, they had been in adverse possession for at least ten years ending on the date in 2009 that the Zarbs issued proceedings for possession against them.
**Interruption**

It is possible for a period of adverse possession to be "interrupted" by the paper owner. If this happens, the effect of the interruption is to re-set the adverse possession clock to zero, so that the adverse possessor has to start again to build up the requisite period of time before he can claim to be entitled to the land. The Zargs argued that the events in 2007 constituted an interruption to the Parrys' adverse possession, so that by 2009 the Parrys had only completed two years' adverse possession – which would not be enough.

The court noted that the Zargs had intended to recover possession in 2007. However, they had had to withdraw before that had been achieved. The court ruled that, in order for something to constitute an interruption, the adverse possessor must lose exclusive physical control of the land. Although case law showed that the re-taking of possession by the paper owner for a period of time as short as an hour could constitute a valid interruption, on the facts of this case the actions taken by the Zargs did not result in them re-taking possession of the land from the Parrys.

**Things to consider**

It is not clear from the judgment in whose name the strip of land was registered. It might be thought that it would be impossible for a person to adversely possess land which is registered in his own name. However, this may not always be the case.

The rules governing land registration provide that the boundaries of registered land are usually general only, and do not show the exact location of the boundary. If the true boundary is not in fact in the position shown on the title plan, legal ownership is therefore unaffected. For this reason, it may be possible for a registered proprietor to be in adverse possession of land which, although apparently registered in his own name, in fact belongs to his neighbour. For an example of this principle in the context of the acquisition of prescriptive rights, see *Milsum v Gorman*.

The court made the point that, because an interruption need not be for very long in order to be effective, those in adverse possession of land are at risk of losing possession while out for a walk or doing some shopping. However, that may not be the end of the matter. For those who have already completed 10 years' adverse possession of registered land at the time they are dispossessed by the paper owner, the Land Registration Act provides that an application may be made within six months for the land to be registered in the name of the adverse possessor.

The above analysis was written by Sarah Dawe, associate in Wragge & Co's Real Estate group.

Wragge & Co's real estate specialists provide an analysis of the latest developments in when is a lease not a lease?, easements, restrictive covenants, boundaries, Green Deal and planning.

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