



In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month: procedure in the FTT, strike out of a dishonest assistance claim, and the general boundaries rule.

NOVEMBER 2024

Jevan v Athansiadi [2024] UKUT 358 (LC)

Summary

The Upper Tribunal determined when an application to the First-tier Tribunal had been ‘made’.

The question arose in the context of a claim for a rent repayment order. Pursuant to s.41(2) Housing and Planning Act 2016, such a claim can only be made if the relevant housing offence was committed ‘in the period of 12 months ending with the day on which the application is made.’

The final date of the offence in this case was 6 June 2022. The application papers were sent to the FTT on 5 June 2023, i.e. the last permissible day. However, the fee was not paid until 22 June 2023.

The Upper Tribunal upheld the first instance decision that the application was made in time. The proceedings had been started by sending the notice of application, not by the later payment of the fee.

Why it’s important

Expiry of limitation periods can have significant ramifications for the ability to pursue a claim, and so the clarity provided by this decision about what is required in the context of the Tribunal (rather than under CPR authorities, which the Tribunal did not find to be of assistance) is to be welcomed.

Dattani and Patel vs Ferns Solicitors [2024] EWHC 2980 (Ch)

Summary

The High Court partially allowed an appeal against strike out of two elements of a claim.

The Respondent, a firm of solicitors, had acted for Mr and Mrs R in relation to a sale of a property. Title to the property was registered, with a Form K restriction on the title referring to the existence of an interim charging order in favour of the Appellant over Mr R’s beneficial interest. The solicitors transferred the entire proceeds of sale to Mrs R, on Mr R’s instructions.



The Appellant argued that the solicitors had acted in breach of constructive trust, and that they were liable for dishonest assistance. Those claims were primarily founded on the presence of the Form K restriction on the title and its ability to alert the solicitors to the existence of the charge. At first instance, those claims were struck out.

The High Court upheld the strike out of the claim for breach of constructive trust. Absent wrongdoing, receipt by an agent of money belonging to a third party was insufficient to render the agent accountable to the third party as a constructive trustee, and in this case, the only alleged wrongdoing was in relation to the dishonest assistance claim.

However, the High Court allowed the appeal against strike out of the dishonest assistance claim. The existence of the form K restriction on the title gave some ground for suspicion that there was another equitable interest, rendering it possible that the solicitor had blind eye knowledge of the interest, or that in not making further enquiries, he had acted other than an honest person would have done. Whether or not that was the case would be a matter for investigation at trial.

Why it's important

This judgment summarises the requirements, including as to pleading acts of dishonesty, in a case of dishonest assistance, and contains a useful application of those requirements in the context of strike out/summary judgment. In this case, the fact that the existence of a form K restriction pointed to the existence of a court order, while not conclusive of the existence of any other interest, was sufficient to distinguish the case from a case where solicitors were on notice of the existence of a possible claim, but unaware of its strength.

Clapham v Narga [2024] EWCA Civ 1388

Summary

The Court of Appeal allowed an appeal in a boundary dispute.

The case concerned a strip of disputed land adjacent to a brook. From the respondent's registered title plan, the disputed land appeared to form part of her land. However, it had been occupied for many years by the appellants.

The courts below had concluded that although the appellants had been in adverse possession of the strip for the requisite period, they had lost title to it by virtue of a combination of the operation of s.75 Land Registration Act 1925 (pursuant to which a paper title owner held land on trust for squatters who had acquired title by adverse possession), and the provisions of the Land Registration Act 2002, pursuant to which the appellants had an overriding interest which ceased to bind successors after three years (as they were not in discoverable actual occupation).



The Court of Appeal allowed the appeal, finding that:

1. The position was governed by the general boundaries rule. The apparent inclusion of the disputed strip in the respondent's registered title did not mean it formed part of her land.
2. Accordingly, the respondent did not have and never had had paper title to the disputed land; there was no room for s.75 to operate.
3. Further, s.75 does not operate where (as in this case) a squatter acquires title prior to first registration of the land.

Why it's important

This case reinforces the significance and wide operation of the general boundaries rule, as well as establishing the way in which s.75 LRA 1925 operates. This will be of significance particularly in relation to boundaries where the physical features in situ for many years differ from the apparent position on the title plans; as Lord Justice Nugee observed, the adverse possession regime in relation to unregistered land favours the longstanding position over the claims of apparent paper title owners.

Lord Justice Peter Jackson's judgment also contains a salutary reminder of the cost of pursuing such disputes and the ways in which it may be possible for landowners avoid them.

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