



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: 2 Court of Appeal cases, on boundary agreements, and the role of assessors in proceedings, and a High Court decision about recovery of property where there has been a breach of FSMA.

APRIL 2025

White v Alder [2025] EWCA Civ 392

Summary

The Court of Appeal held that successors in title were bound by a boundary demarcation agreement whether or not they had knowledge of it.

The proceedings concerned two neighbours. Their predecessors in title had reached an agreement about the boundary between their properties. Years later, both properties having been conveyed, a dispute arose in the context of the construction of an extension.

At first instance, the judge concluded that there was a boundary agreement which was binding on the parties despite neither of them having been party to the original agreement. That conclusion was upheld on first appeal, and also by the Court of Appeal on this second appeal.

Why it's important

There are many judicial comments regarding the utility of boundary agreements for quieting disputes. However, there has been some doubt about whether such agreements were binding on successors. This case reaffirms their value and establishes that boundary demarcation agreements are binding on successors; as they have the effect of clarifying where the boundary is assumed always to have been, successors will only acquire title as delineated by the agreement whether or not they are aware of the agreement's existence.

Orchard v Dhillon [2025] EWHC 834 (Ch)

Summary

The High Court determined that the right to recover property under s 26 of the Financial Services and Markets Act 2000 (which operates where property has been transferred pursuant to an agreement which amounted to a regulated activity made with a person who was not authorised to conduct that activity) was an equity which was capable of binding a successor, if coupled with actual occupation.



The appellants had entered into a sale and rent back agreement (the provision of which is a regulated activity for the purposes of the Financial Services and Markets Act 2000) with a company of which the respondent and her then-husband were the only shareholders. Although the husband was authorised to carry out regulated activities, the company was not. The husband's shares were transferred to the respondent as part of a divorce settlement, and the appellants' home was later transferred to the respondent personally. The respondent sought possession on rent arrears grounds.

At first instance, among other defences, the appellants argued that the respondent herself had been conducting regulated activities contrary to the general prohibition and had done so 'by way of business', the result being that the sale and rent back agreement was unenforceable and the property should be transferred back to the appellants. The judge found that the respondent had not been acting by way of business; it was relevant that she had no other properties subject to sale and rent back agreements, and that she had received the shares in the company via a divorce settlement rather than via a commercial arrangement.

On appeal, Miles J upheld the judge's conclusion that the respondent had not been acting by way of business. However, he found that the appellants had a right to recover the property from the company pursuant to s.26, and this was capable of binding third parties, including the respondent, as a mere equity, notwithstanding that it arose under statute because it gave a right to apply to have property back in circumstances where the legal title had been transferred. In this instance, the respondent was bound by that right under the principles of land registration because they were in actual occupation when the property was transferred to her. Accordingly, the matter would be remitted to determine whether relief should be granted.

Why it's important

This case is significant because the decision involved determining that an earlier decision, *Brown v InnovatorOne plc* [2012] EWHC 1321 (Comm) was wrong. It establishes that the right to recover property under s.26 FSMA may be exercisable against successors of the person who acted without the requisite authority. This prevents avoidance of this consumer protection provision via onward transfer. The judgment also provides useful guidance as to how to determine if a right is a 'mere equity' capable of binding successors.

In addition, it also contains a detailed exploration of the circumstances in which it may be permissible to run a new argument on appeal; in the particular circumstances of this case, the judge permitted such an argument even where a further hearing would be required and the resulting arguments were 'far removed' from those advanced below.



Laidley v Metropolitan Housing Trust Limited [2025] EWCA Civ 448

Summary

The Court of Appeal considered the role of a court-appointed assessor and when the assessor's advice should be disclosed to the parties: the advice should be disclosed if it went beyond evaluating the evidence produced by the parties (eg if the assessor acted as a court appointed expert), but if it did not, then there was no requirement to disclose it unless it gave rise to a consideration of issues which the parties had not had the opportunity to address.

The respondent was a social landlord which had brought possession proceedings against the appellant based on antisocial behaviour. The appellant defended those proceedings and brought a counterclaim for disability discrimination.

At trial, the judge sat with an assessor appointed under the Equality Act 2010. At the outset of the trial, the appellant invited the judge to define the role of the assessor and to disclose the assessor's advice to the parties. The judge refused to do so, and ultimately proceeded to make a possession order and to dismiss the counterclaim.

The appellant appealed on the basis that the judge's conduct in relation to the assessor was contrary to article 6 and was unfair. The first appeal was dismissed, as was this appeal to the Court of Appeal. Here the assessor had only evaluated the evidence presented by the parties.

Why it's important

CPR Part 35.15 gives a broad discretion to the judge about what role an assessors should play in the particular case. This decision provides clear guidance as to the different roles than an assessor can play and how this impacts on whether disclosure of material emanating from the assessor is warranted. It also endorses the view that absent any reason to suppose that the judge had erred in considering whether the assessor had provided new evidence or raised new issues, or strayed outside his/her areas of expertise, the judge's decision about whether disclosure is necessary should be respected.

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