



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: decisions about actual occupation; the Court of Appeal on adverse possession against the estate of a deceased person; and landlord's commission on insurance premiums.

MAY 2025

MTF (NH) Ltd v Hevedi [2025] EWHC 1013 (Ch)

Summary

The High Court determined that a person (D2) was not in actual occupation for the purposes of the Land Registration Act 2002 when the Claimant lender's legal charge was made. Accordingly, he could not have a beneficial interest in the property (owned by his former domestic partner, D1) which ranked ahead of the Claimant's charge.

D1 and D2 had lived together at the property during their relationship. When the relationship ended, D1 left. D2 had then continued living at the property, but left in January against a background of threatened violence. Several times during his time abroad, he saw the property being advertised for sale online. He took steps to have the listings removed and the locks changed, and sent relatives to check on the property. This resulted in him returning to the property at intervals of several months, but no longer staying there. During this time, the property was emptied of his possessions. Come August, he stayed at the property for about two weeks, together with his cousin, his cousin's wife and their children. He departed, and the cousin and his family remained living at the property. The charge was granted in September.

The High Court found that D2 was not in actual occupation of the property on the relevant September date: he himself was not physically present, nor did he have any possessions there. There was no manifestation of occupation by him, nor, on the evidence, did he intend to return. D2's cousin's occupation was on his own behalf and not as a caretaker for D2.

Why it's important

This case is a useful example of what may constitute actual occupation in the context of intermittent presence at a property. Although the judge considered that a short period of absence might be explained by fear of violence and may not have meant going out of actual occupation, D2's failure to seek to resume continuous occupation suggested that his changing of the locks was more to do with



attempting to prevent D1 from selling the property than occupying on his own behalf.

The judgment also contains helpful consideration of the types of evidence a court may expect to see in a case of actual occupation; it was noteworthy, for example, that D2 had not produced any periodical bills from the time when he claimed still to be occupying the property, and he did not have any personal possessions there.

The Court also considered (obiter) whether the claimant should have priority even if D2 had been in actual occupation, on the basis that D2 had deliberately put the property into D1's name when it was purchased, because he was seeking to hide his assets from HMRC (to whom he owed a considerable sum), and he had not brought any limit on D1's authority to deal with the Property to the claimant's attention. The Judge commented that this principle might not apply on the facts of this case, because there was authority that it should apply only where the property could not have been purchased without the mortgage, or where the equitable owner had authorised the transaction.

Nazir v Begum [2025] EWCA Civ 587

Summary

The Court of Appeal determined that land which is part of a deceased person's estate, and therefore subject to a statutory trust under s.33 Administration of Estates Act 1925, is not 'subject to a trust' within the meaning of paragraph 12 of schedule 6 of the Land Registration Act 2002 – meaning that it is possible for such land to be adversely possessed under the 2002 Act regime.

The disputed land in question was within the paper title of a plot owned by the appellant's father. After his death intestate, his estate was not administered for many years; a grant of administration was made some 9 years later. The appellant eventually became the registered proprietor of the property 12 years after his father's death.

These proceedings originated as a possession claim brought by the appellant, seeking possession of the disputed land. At trial, the defendants succeeded in establishing adverse possession over the preceding 10 years. Permission was obtained for a new argument to be raised on appeal, namely that the land had been subject to a trust pursuant to s.33 since the grant of administration was made, which, it was argued, engaged paragraph 12 of schedule 6 and prevented title having been acquired by adverse possession.

On first appeal, the judge held that a 'trust' for the purposes of paragraph 12 means a conventional trust involving a separation of the legal estate (held by the trustee) and the equitable estate (held by beneficiaries), not the type of statutory



trust created by s.33 which, on the authorities, did not result in any residuary legatee having any proprietary interest in any particular asset of the estate. The Court of Appeal has now confirmed that conclusion and dismissed this second appeal.

Why it's important

This decision provides clarity on a technical point. It is good news for would be adverse possessors, because many cases of adverse possession begin or continue when a property owner dies. Where the owner has made a will, the statutory trust arises immediately on death, so a decision the other way would have made adverse possession claims very difficult in such cases.

London Trocadero (2015) LLP v Picturehouse Cinemas Ltd [2025] EWHC 1247 (Ch)

Summary

The High Court determined that a tenant was entitled to a repayment of that part of the insurance rent it had paid as amounted to commission paid to the landlord by the insurance broker.

The lease provided that the tenant should pay insurance by reference to the 'premium payable...for keeping the Centre insured'.

In practice, the landlord obtained insurance via brokers, to whom a commission was paid for their work; industry practice was that the amount of broker's commission could be increased, and part of that commission then repaid to the landlord by the broker (the landlord's commission). When the total amount was recharged to tenants, the effect was that the tenants funded the landlord's commission, enabling the landlord to profit at the tenant's expense.

Mr Justice Richards considered numerous arguments as to the payability of the landlord's commission, and concluded that it was not payable, as a matter of construction of the lease. He concluded that the wording suggested that the tenant should not be obliged to pay these commissions because these sums were not 'payable' since in reality the landlord was only obliged to pay the insurance premium net of that commission, and secondly they were not payable 'for keeping the centre insured' (but rather for enabling the landlord to profit).

Why it's important

This decision is significant because of the likely number of similar claims which may be brought by other parties in similar situations. While much will depend on



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the terms of any individual lease, as well as the particular landlord's insurance arrangements, it is apparent from this judgment that this type of commission arrangement is common in the industry; landlords may face significant liabilities.

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