

Ed earwax and thom flemish law land property essay

Law



**ASSIGN
BUSTER**

The Facts of the case are to include Ed Earwax who lives at number 21 Stanwick Road, Shoreley, Hertfordshire and Thom Flemish who lives at number 23 Stanwick Road, Shoreley, Hertfordshire. Both properties are located in front of a land owned by Johnson Ltd in which a piece of council land later purchased by Ed Earwax shares a boundary line with. The houses of Number 21 and 23 were initially a combined residence which was separated in 1977 and later sold on to the predecessors of Ed Earwax and Thom Flemish. After the initial splitting of the land the boundary line was lost which were an existing hedgerow demarcating the land which from the initial house plan stipulated that the boundary line would be built some place on what is present day number 21 Stanwick Road and the predecessors of both parties had little or no commotion about the boundary dispute. However, in present day Ed Earwax claims his land extends onto the present day construction of a garage which was made in Ed Earwax absence sometime around December of 1996 without his(Ed's) consent. Thom Flemish claims his land extends all the way past his garage and a few feet away from the garage which is presently the demarcating factor between 21 and 23 Stanwick road. When looking up boundary distinction, reference must be made to the land registration practice guide to determine the general precedence to be used when referring to boundary dispute as is the case between Ed Earwax and Thom Flemish owners of 21 and 23 Stanwick Road, Shoreley respectively." Legal boundary – an imaginary or invisible line dividing one person's property from that of another. It is an exact line having no thickness or width and is rarely identified with any precision either on the ground or in conveyances or transfers and is not shown on Ordnance Survey

mapping. Ultimately the exact position of a boundary, if disputed, can be determined only by the court or the Adjudicator[1]." Physical boundary – a physical feature that we can see such as a fence, wall or a hedge, which may, coincidentally, also follow the line of a legal boundary. The legal boundary may run within the physical boundary structure but it might just as easily run along one particular side of the structure, or include all or any part of an adjoining roadway or stream. Living boundary structures such as hedges can be prone to a certain degree of movement: for example, if a hedge is left untended it might take root where it touches the ground and become very wide, making its original line hard to discern. So even if it is clear that the legal boundary ran along the hedge, identifying this boundary on the ground may become very difficult.[2]" In reference to the garage erected by Thom there are some elements as to adverse possession of unregistered land as is the case between Thom Flemish and Johnson Ltd/ Higham Ltd. This elements being factual possession of the land, intention to possess the land, possession is without consent and should the entire situation above to be deemed valid it must then be shown that there has been possession of the land over 12 years. The case of J A Pye (Oxford) Ltd v Graham[3]illustrated that " Factual possession signifies a fitting degree of physical control i. e. It must be a single and exclusive possession Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no one else has done so. [4]" this was identified by Slade J in the case of Powell v McFarlane. In

reference to the present situation it can be deemed fit that Thom has had factual possession of the land as he has acted with the land as if he were the owner of the land by building a garage that encroached upon Johnson Ltd/ Higham Ltd land. When considering the intention to possess the land, reference must be made to Slade J's judgment in the case of *Powell v McFarlane* where he says that " In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, but later seeks to show that he has dispossessed the owner, should be required to adduce compelling evidence that he had the requisite animus possidendi in any case where his use of the land was equivocal, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner[5]." This illustrates the intention to possess the land of Johnson Ltd and not necessarily to own the land, the fact that the building was built onto Johnson Ltd/ Higham Ltd land illustrated that Thom had the intention to possess the land and since it was initially a mistake on the part of the builders who overestimated the land owned by Thom but he did nothing to correct it though he was aware of the mistake further shows his intention to possess the land. Slade LJ in the case of *Buckinghamshire County Council v Moran* " Possession is never ' adverse' within the meaning of the 1980 Act if it is enjoyed under a lawful title. If, therefore, a person occupies or uses land by license of the owner with the paper title and his license has not been duly determined, he cannot be treated as having been in ' adverse possession' as against the owner of the paper title[6]." The simple fact that Johnson Ltd did not give permission to Thom by way of consent or license or lease illustrates an occupation without

consent. Adverse possession for unregistered land is not affected by the new regime of the land registration act 2003 and so if all the above conditions have been met adverse possession can be granted for an unregistered land if the squatter has occupied the land for a period of twelve years as is the case the garage has been built for 17 years starting from December 1996 to 2013 and should a form for adverse possession be signed Thom would have possession of the part of Johnson Ltd's land that the garage sits upon. In reference to the garage erected by Thom, there are some elements as to adverse possession of registered land as is the case between Thom Flemish and Ed Earwax and is based on the assumption that the garage was built on Ed's land as there is no definite boundary, there must be factual possession of the land, there must be an intention to possess the land, possession must be without consent and possession must be by squatter 10 years before application is made for adverse possession. Thom had factual possession of the land; in essence he was operating with the land as his own by building a garage on the land thus assimilating a right of the owner, the case of *Pye (Oxford) Ltd v Graham*[7] identifies that where an individual namely a squatter assumes a right of the owner of the land that individual is possessing the land. Lord J in *Powell v McFarlane*[8] said " In my judgment it is consistent with principle as well as authority that a person who originally entered another's land as a trespasser, in the sense that it did not necessarily, by itself, betoken an intention on his part to claim the land as his own and exclude the true owner[9]" in this case Thom had his garage built upon the land thus indicating his directive to possessing the land. It can be indicated that Thom's occupation of the land without permission from Ed is

definitely a clear indication that he did not seek consent to the use of the land as the garage was built when Ed was away and when he came back and questioned Thom on the use of the land, Thom told him that he was using his own land. However Thom cannot rely on adverse possession for the old law as the 12 year sentence must have ended before October 13th 2003 but since the garage was built in 1996 the minimum amount of 12 years spent of the land is void and cannot be applied. Adverse possession under the new law post 2003 can still not be applied as a minimum of 10 years must be spent on the land. After lengthy negotiations both parties have agreed that the fence to be constructed should be directly below the guttered railing of the garage i. e. basically touching the garage wall thus leading to both parties having their own border line , the garage and down left belonging to number 23 and the fence down right belonging to number 21. Settlement Agreement made this [.....] day of [.....] 2012

BETWEEN

(Ed Earwax)And(Thom Flemish)RecitalsThe first Party above is Mr/Mrs: Ed Earwax of [21 Stanwick Road, Shoreley, Hertfordshire]The second Party above is Mr/Mrs: Thom Flemish of [23 Stanwick Road, Shoreley, Hertfordshire]A dispute had arisen between the Parties concerning: from a boundary dispute in which a garage built by Thom Flemish is/isn't encroaching on Ed Earwax land and the where the fence to demarcate both lands should be constructed along with other neighborly disputes on the noise level and foul smell of birds. The Parties entered mediation to solve the

Dispute on Boundary disputes with the assistance of the Mediator

Mr/Mrs/Ms/Miss Adeola emiloju

Agreed Terms

The parties have hereby agreed the following: 1 Thom agrees to reduce the noise level of his grandkids2 Ed agrees to improve the smell from his birds3

The boundary line will begin from the already constructed

garage4..... 5.....

The Parties further agree that

This agreement shall be legally binding on the PartiesThe Parties, and anyone else attending or involved in the mediation will keep confidential and treat as privileged all information disclosed to them prior to and during the Mediation and shall not disclose such information to any other personAll information disclosed at or prior to the Mediation shall be ‘ without prejudice’, privileged and inadmissible in any judicial or arbitral proceedings, unless any such information would otherwise be disclosable therein. Signed by the PartiesEd EarwaxThom FlemishDate: 25th February 2013