

Land law problem question on driveway development



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Introduction

The problem focuses on whether James would be bound by the right of driveway and the lease that Lily creates during her ownership in which the land was unregistered. Also, James wants to know whether the developer is bound by his interests; the restrictive covenant and the drainage. A distinction between the interests must be revealed in order to determine whether those interests are legal or equitable since they are treated differently by the law.[1]

James became the first registered proprietor of the property in 2016 since Lily's title had remained unregistered from 1982. The sale to James is a registrable disposition of the land as a transfer. [2] Subsequently, James has become the legal owner and has complied with obligations under s. 27 Land Registration Act 2002 (LRA).

Driveway

The first issue is whether James is bound by the right to use the driveway that Lily granted to Bill. This right is an easement.[3]The next thing to consider is whether this easement is capable of being a legal or equitable easement. Under s. 1 (2) (a) Law of Property Act (LPA) for an easement to be a legal, it must be for a term equivalent to the fee simple absolute in possession or for a fixed term of years.[4]However, as shown by the facts this only lasts until Bill could create an alternative access. That is not a term of years since there is not a fixed date and it is not equivalent to the fee simple absolute as it is determinable. Therefore, it can be only equitable
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easement.[5]Equitable rights are rights in personam, which means a right is enforceable against certain persons.[6]Although the land was unregistered, James can be bound by rules for equitable interests. As there is no land charge registered,[7]the only way this right will be enforceable is subject to the doctrine of notice. The only way that James can be bound is the doctrine of notice. This operates so that equitable interest will bind everyone except the bona fide purchaser (BFP) for value of a legal estate without notice. So, equitable owners could lose their interests if BFP of land has no notice of them. The absence of notice must be “genuine and honest”.[8]In this situation, the reasonable purchaser would have made enquiries because as the house plan showed, there is no alternative way for Bill to enter his garage apart from using James’s driveway. Constructive notice is set out in s. 199 (1) (ii) (a) LPA which provides that a purchaser will be bound by notice if “it is within his knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him”.[9]Here, James has “deliberately abstained from enquiries to avoid having notice”.[10]So, the fact that James’ solicitor did not find anything about the right of driveway on the title register is irrelevant, and it is therefore likely that he will be bound due to constructive notice.

Legal lease

The second interest was a 4-year lease of the stable block to Usman which was created in 2015. This is potentially a legal lease since it is a term of years absolute, thus being a legal estate in land.[11]However, a lease that is more than 3 years to be valid must be created by deed.[12]In this case, Usman has only a letter which suggests that he failed to comply with the <https://assignbuster.com/land-law-problem-question-on-driveway-development/>

formalities.[13]At this point, it is necessary to know exactly if it was a letter or a deed as it is considered as a very important detail. Since there is no deed it does not take effect at law and is equitable only. S. 11 (4) (b) LRA[14]states that unregistered interests that override first registration are those that appear in Schedule 1.[15]Equitable leases cannot be an overriding interest under Schedule 1 Paragraph 1 because it applies only to legal leases.[16]It can be argued that James had constructive notice when he bought Oswald House as he noticed the painting equipment when he viewed the stable. However, James asked Lily about them and she clearly lied to him as she replied that they belonged to a friend which would get rid of them before James moved in. James can be considered as a BFP of a legal estate for value without notice. Therefore, James takes free from Usman's lease.

Restrictive Covenant

The third issue is whether the developer can build houses on the register land field. Although the covenant was created by deed, it is an equitable interest[17]because it does not fall in any legal interests that are listed in s. 1 (2) LPA.[18]It is not a registrable disposition under s. 27 of LRA.[19]S. 29 of LRA[20]makes it clear that a purchaser is bound by interests that are protected by entry of notice on the title register or interests that override under Schedule 3.[21]Also, Schedule 3 Paragraph 2 refers to the interests of persons in actual occupation. James is not in actual occupation therefore it cannot be applied.[22]Restrictive covenants do not appear on Schedule 3 of the interests that can override. Also, there is no notice under s. 32 LRA[23]which would protect the interest and thus developer takes free.

Drainage

Within the same deed as restrictive covenant, James had been granted a right of drainage. Right of drainage is an easement.[24]The next thing to consider, is to identify the nature of this right as to whether it is a legal or equitable easement. To be a legal easement, it must be equivalent to a term of years or to the fee simple absolute under s. 1 (2) (a) LPA. Since it is created by deed and it complies with the requirements it can be regarded as potentially a legal easement.[25]As this easement was created prior to the LRA, it is not a “ registrable disposition”.[26]Although, they can be overriding interests under the LRA Schedule 3 Paragraph 3 (which states that a legal easement is an interest that can override registrable disposition).[27]This easement is not the subject of an entry in the register, as James can find no mention of it. Therefore, it needs to be checked whether it falls within any of the Paragraphs of Schedule 3. Schedule 3 deals with interests that override registrable dispositions. Only easements that are obvious on a reasonably careful inspection will override. It is argued that this should have been obvious due to its regular use, therefore it will override.[28]Therefore, developers are bound by James easement even though it does not appear on the title register.

Conclusion

In conclusion, James is bound by the right that Lily creates in relation to Bill’s driveway but takes free from Usman’s lease. On the contrary, the developer can build his new homes on the field but is bound by James’s right of drainage.

Bibliography

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[1] Sandra Clarke and Sarah Greer, *Land Law* (5th edn, Oxford University Press 2016) 38.

[2] Land Registration Act 2002, s. 27(2)(a).

[3] *Ellenborough Park, Re* [1956] Ch 131.

[4] Law of Property Act 1925, s. 1(2)(a).

[5] *Ibid*, s. 1(3).

[6] Robert Chambers, 'Landmark Cases in Property Law' [2016] CLJ 635, 637.

[7] Land Charges Act 1972.

[8] *Midland Bank v Green* [1981] AC 513, [528] (Lord Wilberforce).

[9] Law of Property Act 1925, s. 199 1(ii)(a).

[10] *Jones v Smith* [1841] 66 ER 943, [55] (Lord Wigram).

[11] Law of Property Act 1925, s. 1(1)(b).

[12] *Ibid*, s. 54(2).

[13] Law of Property (Miscellaneous Provisions) Act 1989 s. 1(2).

[14] Land Registration Act 2002, s. 11(4)(b).

[15] *Ibid*, Schedule 1.

[16] *Ibid*, Paragraph 1.

[17]Law of Property Act 1925, s. 1(3).

[18]Ibid, s. 1(2).

[19]Land Registration Act 2002, s. 27.

[20]Ibid, s. 29.

[21]Ibid, Schedule 3.

[22] *Kling v Keston Properties Ltd* [1989] 49 P & CR 212.

[23]Land Registration Act 2002, s. 32.

[24] *Ellenborough Park, Re* [1956] Ch 131.

[25]Law of Property Act 1925, s. 52.

[26]Sandra Clarke and Sarah Greer, *Land Law* (5th edn, Oxford University Press 2016) 88.

[27]Land Registration Act 2002, Schedule 3, Paragraph 3.

[28]Ibid, Paragraph 3(2).