



Overriding interest trumped by overreaching

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Simon Williams has a property, commercial and professional negligence practice consisting of advocacy, drafting, advisory work and mediating in a range of property and business-related matters.

It was in *City of London Building Society v Flegg*¹ that the House of Lords notably considered the position of overriding interests and those interests said to overreach them in the context of a mortgage of a property occupied by a third party. The courts had reason to revisit this area of the law much more recently in *Baker v Craggs*² when the owner of the dominant tenement of an easement claimed that his interest overreached the overriding interest of the owner of the servient tenement. Now, in an ex tempore judgment given on the 19th March 2020, Jeremy Hyam QC, sitting as a Recorder in the County Court at Bristol, has adjudicated upon a similar issue in the case of *Knight v Fernley* in which the unregistered purchaser of a property who had gone into actual occupation of it claimed that her interest overrode that of a later transferee of the very same land.

The property was one of three houses in a development consisting of six plots of land in total. On the 20th August 2015 Mrs. Knight exchanged contracts for the purchase of one of the houses and its surrounding land from the developers, two individuals trading as a partnership, and completed the purchase the next day, the 21st August 2015, when she handed over the purchase price and went into occupation of the property. It was not however until the 11th February 2016 that her solicitors first applied to HM Land Registry to register her as the proprietor of the property.

In the meantime, by a transfer dated the 7th December 2015 Mr. and Mrs. Fernley acquired one of the three undeveloped plots of the development land. Because it was understood to be the transfer of the last of the six plots to be sold, it was effected by a TR1 (transfer of whole) and the land the subject of it was described simply as the address of the development land. Neither, in those circumstances, was there any need for a transfer plan. The property having not by this time been

¹ [1988] AC 54

² [2017] Ch 295 and, on appeal, [2018] Ch 617

registered in the name of Mrs. Knight, and still remaining part of the development land, it was therefore inadvertently transferred to the Fernleys along with the undeveloped plot of land which they had all along intended to purchase.

This only came to light in April 2016 when the Fernleys came to sell the plot of land along with other land which they owned adjacent to it. Their solicitors sought copies of the entries on the register for all of the neighbouring land and found the pending application by Mrs. Knight's solicitors in relation to the property. Unsurprisingly this caused significant problems for them in dealing with the plot of land such that they were not prepared simply to hand the property to Mrs. Knight without adequate compensation. Such compensation was never readily forthcoming, whether from her or her arguably negligent solicitors' insurers. Hence, when Mrs. Knight sued the Fernleys for alteration of the register under Schedule 4 to the Land Registration Act 2002 ("the 2002 Act") on account of the alleged "mistake" made in registering them as owners in place of her, the claim was resisted and finally came before Recorder Hyam QC on the 18th and 19th March 2020.

Mrs. Knight argued that her unregistered purchase of the property in August 2015 gave her at least an equitable interest in it which, coupled with her actual occupation of it from then onwards, amounted to an interest which overrode subsequent interests pursuant to section 29 of, and paragraph 2 of Schedule 3 to, the 2002 Act. The Fernleys did not dispute that, in theory, that was the case. Their position, however, was that, having themselves paid purchase monies to the two vendors for land which, inadvertently, included the property, any equitable interest of Mrs. Knight was overreached and subordinated to their interest in it pursuant to sections 2(1)(ii) and 27(1) of the Law of Property Act 1925. In this way, they argued, her interest in the property did not in fact override theirs.

Although conscious of the potential windfall for the Fernleys, the learned Recorder could find no fault with their argument. He also agreed with the Fernleys that, in any event, any mistake made by anyone in the conveyancing of these plots of land did not amount to one of a kind which justified alteration/rectification of the register under paragraphs 2 or 3 of Schedule 4 to the 2002 Act as sought by Mrs. Knight. He therefore dismissed her claim with costs.

It remains to be seen whether she will seek to have this decision reviewed by a High Court judge. For the time being, however, she is left wondering how a property which she thought she had purchased in August 2015, and in which she has lived since then believing it to be hers, has turned out to belong to someone else.

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