

adverse to human rights?

The Land Registration Act 2002, which took effect on 13 October 2003, contains a curtailed regime for the acquisition of land by adverse possession. Registration may only be overridden by possession in cases where there has been abandonment, dealings off-register, entry into possession under a reasonable mistake as to rights, and where the register is not conclusive.

The old system was generous to squatters. In *Beaulane Properties v Palmer* ((2005) 14 EG 129), Nicholas Strauss QC held that the old, pre-2003 doctrine of adverse possession, infringed the Human Rights Act 1998 in relation to registered land. The decision is relevant because the old law applies to all cases where the limitation period for recovery expired before 13 October 2003 (and the 1998 Act applies from 7 October 2000).

Beaulane owned a field, which Mr Palmer used without permission (together with his own adjacent field) for the grazing of horses. He secured and maintained the land in the manner of an occupying owner. By June 2003 Mr Palmer had extinguished the paper title of Beaulane. Thereafter Beaulane held the field on trust for Mr Palmer under section 75 of the Land Registration Act 1925. Beaulane contended that the effect of section 15 and Schedule 1 of the Limitation Act 1980 (which provide a defence to an action for possession against adverse possessors of land after

12 years) combined with section 75 was to deprive it of its property without either justification or compensation, in breach of Article 1 of the First Protocol in Schedule 1 to the 1998 Act (protection of property).

The issue had been considered (*obiter*) in *Pye v Graham* (CA). Mummery LJ opined that Article 1 had not been engaged, because the 1925 and 1980 Acts did not interfere with "the peaceful enjoyment of possessions" but only deprived a person, after a period, of his right of access to the courts. The extinction of title by section 75 was merely "a logical and pragmatic consequence" of the time-bar.

The Judge dismissed three principal arguments as to why Beaulane would not be "deprived of its possessions". First, the Judge was not persuaded by the distinction in *Pye*: section 75 was "a parliamentary conveyance" and expropriatory. The second argument was that Beaulane's property rights were *per se* defeasible in the event of 12 years' adverse possession, so that Beaulane was not "deprived" of them in that event. Though appealing, it ran contrary to authority. The third was that Article 1 was directed against state expropriations only. The Judge held otherwise: the "public interest" required fairness in private dealings to be ensured.

As for the provisos to Article 1: the usual justifications for limitation – preventing stale

claims, certainty of title etc – were found unpersuasive or inapplicable to cases involving registered titles. Thus the expropriatory provisions, especially absent a compensation payment, were not balanced by a correlative public interest. Accordingly, sections 15 of the 1980 Act and 75 of the 1925 Act were incompatible with Article 1.

Under section 3 of the 1998 Act, existing legislation ought to be construed compatibly with Convention rights. After a lengthy historical analysis, the judge interpreted section 75 as applying only to those cases where the trespasser could establish possession under the 1925 case-law (essentially only where the land had been abandoned, or the possessor had used the land in a manner manifestly inconsistent with the way in which the paper title owner had used it). Mr Palmer could not do so, so his claim failed.



Kathryn Purkis
practises in the property field

chambers: news

We are delighted to announce that Geraldine Clark, formerly a member of 4-5 Gray's Inn Square, has joined Serle Court. Geraldine is a specialist in commercial litigation and arbitration and was called to the Bar in 1988. She practises in the fields of commercial contracts; insurance & reinsurance; shipping & international trade; banking; commercial fraud; company law and professional negligence. Geraldine is also a CEDR accredited and registered mediator bringing the total number of mediators in chambers to 10.

We are also pleased to be able to welcome David Casement and Andrew Grantham as associate tenants. David is a member of Exchange Chambers in Manchester and is an established chancery commercial practitioner.

He is recommended in the major directories: Chambers & Partners says he has "*QC stamped all over him*" and that "*he is a forceful advocate who connects well with judges*" and in The Legal 500 he is said to be "*tipped as a 'star of his generation for commercial litigation'*". Andrew is a member of Kings Chambers in Manchester and also has a well established commercial and chancery practice. He has been described by The legal 500 as "*strikingly intelligent*".

The second edition of Andrew Francis's highly regarded book *Restrictive Covenants and Freehold Land – A Practitioner's Guide* has now been published. It has a chapter written by Mark Davies of Stewart Title on restrictive covenant indemnity policies and a foreword

by George Bartlett QC, President of the Lands Tribunal. The book is published by Jordans. James Behrens has written the second edition of his book *Practical Church Management*, which is the standard text on the subject for clergy and parishioners. It is published by Gracewing.

A number of members have received a number of appointments since the last newsletter: Frank Hinks QC and James Corbett QC have been elected members of the Society of Trust and Estate practitioners, James Behrens has been appointed a Recorder on the Midland Circuit and Ann McAllister has been appointed as a Deputy Adjudicator to HM Land Registry.