Possession: ten tenths of the law

After more than a decade in the courts the long running saga that is “Pye” has reached a conclusion. The Grand Chamber of the European Court of Human Rights has ruled that the acquisition of land by adverse possession under the Land Registration Act 1925 and the Limitation Act 1980 without the payment of compensation to the deprived paper owner is not a breach of Article 1 of Protocol 1 of the European Convention of Human Rights, the right to peaceful enjoyment of one’s possessions. The decision ends a period of uncertainty surrounding the law of adverse possession and effectively endorses both old and new regimes by which a registered proprietor can be dispossessed without receiving compensation.

The Facts

In the early 1980s the Grahams occupied land owned by Pye under a grazing licence. Title to the land was registered at the Land Registry. After the expiry of the licence the Grahams remained in occupation and in 1997 claimed that they had acquired title, having been in adverse possession for more than 12 years. In 2002 the case reached the House of Lords for a determination on the meaning of “intention to possess”. The House of Lords ruled that the Grahams had had the requisite intention and accordingly that the land was theirs.

In 2000 the Human Rights Act 1998 had come into force. Article 1 of the First Protocol provides that a person is entitled to the peaceful enjoyment of his possessions and should only be deprived of these where it is in the public interest to do so. Any deprivation must be proportionate to the aim being pursued. There is also a caveat to Article 1 which empowers the government to impose laws controlling the use of property. Pye appealed to the European Court of Human Rights, its case now against the U.K. government, claiming that it had been deprived of its land under English property law and this was both disproportionate and had been permitted in a manner that was not in the public interest.

The Issue

The European Court of Human Rights ruled that the English system of acquiring land by adverse possession under the Land Registration Act 1925 and the Limitation Act 1980 was a breach of Article 1. This judgment entitled Pye (and many others in similar situations) to
compensation from the U.K. government. For Pye this would almost certainly have been a sum of several million pounds. The U.K. government asked for the ruling to be referred to the Grand Chamber, the European Court's highest appellate forum, from which there is no further right of appeal.

The Decision

The Grand Chamber found by a 10:7 majority that there was no violation of Article 1. The majority's view was that the primary purpose of the law of adverse possession was to control the use of land. Limitation periods such as the 12 year time period for adverse possession were used by many Member States as an important means of achieving legal certainty and finality, and preventing stale claims.

The Grand Chamber was also influenced by the fact that the adverse possession regime had been in existence a long time. Of itself this did not stop a challenge to its legitimacy, but it meant that Pye would have been familiar with the regime and would have known that not very much action was needed on its part to stop the Grahams' possession of the land being adverse (for example, Pye could have approached the Grahams with a request for some rent). This was relevant to the question of proportionality.

That the Grahams were now the potential beneficiary of the land’s significant development value was regarded as irrelevant, both to the question of compensation for Pye and the overall fairness of the regime. If the point of a limitation period was to provide legal certainty this would be completely undermined if it were possible to bring a claim for compensation after the period’s expiry. For limitation periods to be effective they must apply regardless of the values involved.

Comment

The decision will be a relief to the U.K. government, releasing it from the threat of hefty compensation payments to Pye and other dispossessed registered proprietors. It also makes a challenge to the regime of adverse possession in either unregistered land or the new system under the Land Registration Act 2002 extremely unlikely.

One of the principal concerns of the ECHR (and others critical of the law of adverse possession) had been the loss of title without any requirement that notice be given to the registered proprietor. The new regime under the Land Registration Act 2002 addresses this in relation to registered land, providing that after 10 years a squatter can claim title by serving notice on the paper owner. If the paper owner objects to its loss of title, the squatter has only very limited statutory grounds for objection. This is one of the reasons why it is very important that registered proprietors ensure that they provide the Land Registry with up to date addresses for service.

In relation to unregistered land, the concept of adverse possession has always been less controversial. Allowing people to prove title in the absence of documents serves a legitimate public interest by helping to bring land back into use where ownership is not clear or is disputed. At a time when land is an increasingly limited resource this is not hard to justify.
MAYER BROWN INTERNATIONAL LLP ADVISE ON REDEVELOPMENT OF SCHOMBERG HOUSE, 80 PALL MALL, SW1

GE Real Estate and joint venture partner GraceMark Investment have signed a prelet at their 40,000 sq ft redevelopment of Schomberg House, 80 Pall Mall, SW1 with Permira, the private equity company run by Damon Buffini. Permira is currently based at 20 Southampton Street in Covent Garden and needs the extra space for expansion. It will be doubling the size of its London headquarters and will pay around £80 per sq ft at Schomberg House. Mayer Brown real estate partner Peter Sugden and assistant Richard Tilbrook acted for GE.