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COMMONS REGISTRATION ACT 1965

Reference No 236/U/85

In the Matter of land at Ferry House,
Thames Street, Sunbury on Thames,
Spelthorne District, Surrey

DECISION

This reference relates to the question of the ownership of land at Ferry House, being a strip extending from Thames Street on the north to the River Thames on the south, bounded on the west by this House and the boat house behind it and on the east by a recreation ground, situated in Sunbury on Thames, Spelthorne District and being the land comprised in the Land Section of Register Unit No CL 410 in the Register of Common Land maintained by the Surrey County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference no person claimed to be the freehold owner of the land in question and no person claimed to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Guildford on 6 November 1978. At the hearing George Wilson & Sons (Boatbuilders) Limited ("the Company"), on whose application the registration was made, were represented by Mr M. A. Slorick solicitor of Turner Garrett & Co, Solicitors of Byfleet.

Mr George Sidney Wilson who was born at Ferry House 46 years ago and is now a director of the Company, in the course of his evidence said (in effect):- His grandfather Mr George Wilson who died in about 1936 purchased the House and the business of boatbuilders carried on from it; his father Mr George Frederick Wilson who died in about 1968 succeeded his grandfather. The House and the business were purchased by the Company in 1944. The land ("the Unit Land") in this Register Unit is about 60 ft long and slopes down from Thames Street to the River; a lorry could be driven down it; for about 2/3 rds of its length it is liable to flooding. The boatbuilding done by the Company is done on the island which is in the middle of the River opposite the south end of the Unit Land (Sunbury Lock is at the north-east end of the Island and the Weir is at the south-west end). The part of the Island used by the Company is held under a lease; ever since 1907 for the purposes of the business carried on by the Company, his father, and grandfather, they have had leases (a series of short leases) of part of the Island. The Unit Land has been used by the Company for storing boats in the summer, and for mooring against the foreshore; all materials for the main yard (on the Island) are delivered there; nobody has objected to such use, although the Sunbury Council had some time ago requested the Company to keep one side clear so that people could launch boats.

On the evidence summarised above, Mr Slorick claimed that the Company had proved their ownership contending, as I understood him, that the Unit Land was (for ownership purposes) part of Ferry House owned by the Company, or alternatively the Company now had by its use of the Unit Land acquired a title by possession. At the hearing no document was produced in support of this claim, although after the hearing



Turner Garrett & Co sent me a copy of the Land Registry Certificate for Title No MX 154380 which showed that the Company was on 5 June 1945 registered as owner with an absolute title to the land known as Ferry House as edged red on the plan.

From the last mentioned plan I conclude that the Company have ever since 1945 been the owners (with an absolute title) of the land (Ferry House and the boat house behind) on the west of and adjoining the Unit Land. My copy of the plan does not clearly show whether the whole or any part of the Unit Land is included in the title. However I have a copy of a Land Registry Official Certificate of Search dated 4 July 1974, certifying that the Unit Land was not then registered and I shall therefore in this decision assume that no part of the Unit Land is (at any rate expressly) included in the said registered title.

As to the Unit Land being (historically) part of the Ferry House:-

From the name "Ferry House", the word "Ferry" on the Register map, and the present appearance of the Unit Land, I infer that it is, or at least was, an accessway to a public ferry from and to Sunbury to and from the Island and possibly beyond to and from the other side of the River. These considerations, and its distinct registration as common land under the 1965 Act are all circumstances against its being part of Ferry House. Also against this, is its non inclusion in the land registered by the Company when it took over in 1944, and the failure of the Company to register themselves as owners when they in 1968 registered the Unit Land as common land. Mr Wilson said that the registration was done by his father on behalf of the Company; he said nothing about the circumstances which influenced his father (he may not have known) or about the public use of the Unit Land. On this part of this case my conclusion is that the Unit Land is land in which the public have, or are reputed to have, some sort of interest as being ferry land and/or available for launching boats.

I know of no legal authority which in any way indicates how land with such a reputation should be considered as regards ownership or anything else. If it had not been registered under the 1965 Act, I would have inclined to the view that it was highway, so that the Company would at common law be presumed to own up to the middle line. But land which is highway should not be registered as common land under the 1965 Act, see the definition of common land in section 22; and anyhow the Company claims ownership of all; not merely half of the Unit Land. It may be that the Unit Land was mistakenly registered under the 1965 Act; however as the registration has become final I am obliged to presume its regularity, see section 10.

In my opinion the Unit Land is not and has never been part of the Ferry House in any sense which could now be relevant.

As to the possible possessory title of the Company:-

Although in law all land must have an owner, the 1965 Act contemplates that the true owner may be historically unascertainable. To establish a possessory title the Company must show possession adverse to ~~the~~ historically unascertainable person.

Although the storage of boats etc as described by Mr Wilson might be adverse possession in respect of land over which the public had no reputed rights, it cannot I think be adverse against an owner who is practically obliged to keep the land open to the public. To any such owner such use would appear to be such that he was obliged to tolerate, or so little more as to be practically unobjectionable.



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Further the alleged acts of possession described by Mr Wilson as referable to the business of the Company, are as much (possibly more) referable to that use of the land on the Island leased by them, as to their use of Ferry House owned by them. I am on this reference concerned only with ownership for an estate in fee simple, see section 22(2) of the 1965 Act; so far as the acts of the Company are referable to the Island land, any possessory fee simple title required by them under the Limitation Act 1939 would vest not in the Company but in their lessors as an accretion to the land of which the Company are tenants. No claim on behalf of the lessors was put forward at the hearing.

For the above reasons I am not satisfied that the Company are the owners of the Unit Land. In the absence of any evidence that any other person could be the owner of the land, and it will therefore remain subject to protection under section 9 of the Act of 1965.

I am required by regulation 30(1) of the Commons Commissioners Regulations 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

Dated this 15th —

day of *January* — 1979.

a. a. Baden Fuller

Commons Commissioner