

The case of *Roberts v Swangrove Estates* [2008] EWCA Civ 98, [2008] 2 WLR 1111, raised an interesting general point about adverse possession. The claimant was trying to claim title to large parts of the foreshore and bed of the River Severn on the Welsh side, because he had bought up over 60 manors in that area. The Crown Commissioners raised a preliminary point that since they had been in possession of the disputed areas for many years, they had in any event acquired adverse possession of it, which made a decision on the extent of manorial rights irrelevant. The claimant argued that the Crown could not claim adverse possession. The Court of Appeal held that a claim of adverse possession was available to the Crown. As Mummery LJ said at paragraph [90]:

The Crown has the same right as its subjects to rely on the law of limitation, which was enacted for a purpose which applies as much to the case of the Crown itself as it does to the Crown's subjects. Even if the position were possibly different at some remote period in legal history, which would be surprising as the Crown was treated as a favoured litigant, modern legislation (the 1947 Act and the 1939 and 1980 Limitation Acts) have put the matter beyond doubt. On this point the same law of limitation applies to both Crown and citizen.

6.6 Human Rights

The case of *Ofulue v Bossert* [2008] EWCA Civ 7, [2008] 3 WLR 1253 the Court of Appeal considered the case of *Beaulane v Palmer* and *Pye v UK* (Grand Chamber).

The case concerned a house which was registered in the name of Mr Ofulue in 1976. He let the house to tenants, and moved to Nigeria. In 1981 the former tenants left and allowed the Bosserts into the property. At that time the property was in a very poor state, and the council had made a closing order on it. The Bosserts did a number of repairs and paid the rates, but did not pay any rent. There were various visits by Mr Ofulue to the property, and he seems to have made offers to grant the Bosserts a lease. However, these discussions came to nothing. In 1987, Mr Ofulue began possession proceedings, and the Bosserts counterclaimed in 1990, saying that they had been promised a lease for their repair works. In 1991 and 1992, the Bosserts made 'without prejudice' offers to buy the house, which were rejected. Mr Ofulue did not have the money to pursue the possession claim, so it was stayed by the courts in August 2000. In September 2003, further possession proceedings were started. The remaining defendant (Mr Bossert had died by then) claimed adverse possession.

The 12 year limitation period was held by the trial judge to have ended in 1999, and was therefore before the Human Rights Act 1998 came into force. However, the Court of Appeal considered whether they should follow *Pye v UK*. Arden LJ, in the only substantive judgment, held that the court was bound to follow *Pye v UK*. At paragraph 54, Arden LJ said:

The Strasbourg court held that the relevant provisions were for the regulation of dealings in land and were controls on the use of land within the second paragraph of art 1. The significance of this holding was that the fact that adverse possession took place without any compensation for the paper owner did not entail any violation of art 1. In my judgment ... its conclusion on this point does not turn on the specific facts of the *Pye* case or on the fact that the land was unregistered land so that s 75 of the Land Registration Act 1925 did not apply. On this point, the Strasbourg court differed in its conclusion from that of Mr Nicholas Strauss QC, sitting as a deputy judge of the Chancery Division in *Beaulane*. [Counsel for the defendants] has filed lengthy submissions to the effect that *Beaulane* was wrongly decided but I do not consider it is necessary to go into those submissions, nor do I propose to do so as an application has been made in that case for permission to appeal out of time.

The Court therefore considered that *Pye v UK* should be followed in all cases of adverse possession by UK courts. However, *Beaulane* was not overruled, as an appeal out of time was expected, and the case did not directly raise the *Beaulane* point, as the period for adverse possession ended before the coming into force of the Human Rights Act 1998. However, it is clear that the Court of Appeal will follow *Pye v UK*, and not *Beaulane*.

For an article on this point, see Dixon, M 'Human rights and adverse possession: the final nail' [2008] Conv.160.

6.7.2 Acknowledgement of the paper owner's title by the squatter.

Ofulue v Bossert [2008] EWCA Civ 7, [2008] 3 WLR 1253 also has an interesting point to make about acknowledgement of title. The Bosserts had made a defence and counterclaim in the original (discontinued) possession proceedings on the basis that they were entitled to a lease in return for their repair work. It was held by the court that this did not admit that Mr Ofulue was entitled to possession as a result of his title. As Arden LJ said at paragraph [74]:

By claiming to be entitled to a lease of the Property the Bosserts in their defence admitted that the Ofulues were the true owners of the Property. However, they were clearly not accepting that the Ofulues were entitled to immediate possession. Therefore on the true interpretation of the defence there could be no acknowledgement or admission that the Bosserts were not in possession or that time was not running in their favour for the purpose of the 1980 Act.

The two letters offering to buy the property were 'without prejudice', and therefore not admissible in evidence.