

Chapter 18: Assessment question

The Aberconwy District (Llandudno, Conwy, Llanrwst, etc.) became an area of compulsory registration of title on 1 December 1988.

In early 1988 Geoffrey purchased a small piece of land 'Lomasacre' situated in Aberconwy. Lomasacre formed a small part of the vast 'Brooke Estate' owned by John. Geoffrey did his own conveyancing; as a result no endorsement referring to the sale of Lomasacre was placed on the deeds to the Brooke Estate. Geoffrey has only visited Lomasacre on one occasion since he purchased it; on that occasion he dumped some rusting railings on part of the land.

Last week John sold the whole of the Brooke Estate to Malcolm; Malcolm believes that Lomasacre is part of the land he has purchased. He has successfully applied for registration as proprietor of the whole of the Brooke Estate.

Discuss.

Specimen answer

The problem scenario describes a 'double conveyancing' situation. John sold Lomasacre to Geoffrey in early 1988, before it became compulsory to register Lomasacre with a separate title.

In these circumstances Geoffrey should have ensured that the sale of Lomasacre had been endorsed on the deeds of the Brooke Estate. He failed to do so. Recently John sold the whole of the Brooke Estate to Malcolm, with the result that Lomasacre has been conveyed twice. On these facts it is clear that Geoffrey has the best title to Lomasacre. However, to the scenario must be added the fact that Malcolm has been registered successfully as proprietor of the whole of the Brooke Estate, including Lomasacre. Now Geoffrey's only hope of asserting his title to Lomasacre is to obtain rectification of the register.

The court's power to order rectification is set out in Schedule 4 of the Land Registration Act 2002 (replacing s. 82 of the Land Registration Act 1925). If, as in the present case, rectification of the register is sought against a 'registered proprietor in possession', the claim to rectification is subject to the limitations set out in para. 6(2) of Schedule 4, which provides as follows:

- (2) No alteration affecting the title of the proprietor of a registered estate in land may be made under paragraph 5 without the proprietor's consent in relation to land in his possession unless—
- (a) he has by fraud or lack of proper care caused or substantially contributed to the mistake, or
 - (b) it would for any other reason be unjust for the alteration not to be made.

It is unlikely that para 6(2)(a) will apply. There is nothing in the facts of the instant case to suggest that Malcolm (the registered proprietor) acted fraudulently - on the contrary, we are informed that he believed Lomasacre to be part of the land he had paid for. Neither is

there any evidence that Malcolm lacked care or substantially contributed to the mistaken registration – quite the opposite, it is Geoffrey who has committed the substantial mistake. Certainly the presence on Lomasacre of ‘rusty railings’ cannot be said to have indicated to Malcolm (or anyone else for that matter) that Geoffrey might have a claim to beneficial ownership of the land. In fact, the presence of ‘rust’ on the railings suggests, if anything, that the land has not been used for some time.

Geoffrey’s only hope is that alteration of the register will be ordered on the broad ground that it would be unjust to leave the register unaltered. However, it is clear from the wording of para 6(2)(b) (particularly the use of a double negative) that this provision should only be used in a case where it is absolutely clear that justice demands that the register should be rectified.

One question the courts will ask is whether, if Geoffrey is refused rectification, cash compensation at the market value of his lost land will be adequate compensation (*Epps v Esso* (1973) [see p.501]). Considering the infrequent and uneconomic use to which Geoffrey has put his land the answer to that question is almost certainly ‘yes’, and the conclusion seems inevitable that justice will not demand a rectification, and that rectification will be refused. Of course Geoffrey’s argument that justice is on his side is not helped by his failure to follow normal conveyancing practice.

The question of compensation remains. According to Schedule 8 para 1(1)(a) of the Land Registration Act 2002 a person is presumed entitled to be indemnified by the registrar if he suffers loss by reason of a mistake whose correction would involve rectification of the register. In the present case there is no doubt that the presumption in favour of compensation will be rebutted. Geoffrey’s compensation will be dramatically reduced, or even disallowed, due to his own serious lack of care (see Sch. 8 para 5 LRA 2002).