

Chapter 4: Protection of legal and equitable property rights in unregistered land

Assessment question

In 1972, Ruth purchased the fee simple in Grand Villa, a large country house with two acres of grounds. The title was unregistered in an area which did not become an area of compulsory registration until 1988. Grand Villa was conveyed to Ruth in her sole name. Four weeks ago Les purchased Grand Villa from Ruth. Since the execution of the conveyance, the following matters have come to light.

- Martin, Ruth's husband, has returned from an extended business trip to Malaysia, and is alarmed to discover that Ruth has sold Grand Villa to Les. Martin claims that, since in 1987 he paid £200,000 for a total reconstruction of Grand Villa, he has 'rights' which bind Les.
- Dan has arrived at Grand Villa and has produced a document (not in the form of a deed) which Ruth and Dan signed six months ago. The document is a lease for 15 years of part of the grounds of Grand Villa.
- Harry, owner of neighbouring Fairways, has arrived at Grand Villa and produced a deed executed some time in the 1920s. (The exact date is difficult to read.) This deed was executed by the then owner of Grand Villa, and contains a restrictive covenant in favour of the owners of Fairways to the effect that Grand Villa is to be used for residential purposes only. Les plans to convert Grand Villa into a conference centre.

Advise Les as to whether any of these matters will affect him.

Specimen answer

Martin's claim

There are two types of right which Martin can claim against Grand Villa. The first is his 'home rights' (known formerly as 'rights of occupation') granted by the Family Law Act 1996 (as amended). These rights automatically arise from the fact that he is Ruth's spouse and she had sole title to the matrimonial home. The 'home rights' are classed as an equitable interest, but are not subject to the doctrine of notice; they are registrable as a Land Charge 'Class F'. Almost certainly Martin did not know that he needed to register his Class F charge, and thus it is almost certain that his home rights will not bind Les.

Martin's second right is the constructive trust interest (see 1.3.7) which he obtained in Grand Villa through paying £200,000 for a total reconstruction. Cases such as *Lloyds Bank v Rosset* (see 8.8.3) hold that substantial contributions to the cost of purchasing or reconstructing a property will give rise to a constructive trust interest in the contributor's favour.

A constructive trust interest is subject to the equitable Doctrine of Notice. Thus Martin's interest will bind Les unless Les can prove that he is a bona fide purchaser for value of a legal estate (or interest) without notice of Martin's interest. It is reasonably clear that Les is a bona fide purchaser for value of a legal estate. Thus Les will take Grand Villa free from Martin's interest if he can prove that at the time of the conveyance he was without notice of Martin's claim.

'Notice' comes in three forms, actual, constructive and imputed. It would appear that at the time of the purchase Les had no actual knowledge (i.e. actual notice) of Martin's constructive trust interest. However Martin will probably contend that Les had constructive notice of Martin's interest.

Under the constructive notice rule a purchaser of land must make all those enquiries which a reasonable purchaser makes (s.199(1)(ii)(a) LPA 1925; see 4.5.4). In particular he must inspect the land for signs of

occupiers other than the vendor and investigate the title deeds. If a purchaser fails to make a reasonable enquiry which would have revealed an equitable interest, he will have constructive notice of that interest.

Martin's interest is not the sort which is revealed in title deeds. But it is the sort which may gain protection from the rule in *Hunt v Luck* [1902] 1 Ch 428. If on inspecting the land the (potential) purchaser sees signs of a person other than the vendor occupying the land, then the purchaser must seek out that other person and enquire of him what claim he has to the land.

We must hope that Les made a proper inspection of Grand Villa, and that when he made that inspection there were no signs that Martin lived there...In *Kingsnorth Finance Ltd v Tizard* [1986] 1 WLR 783, the surveyor drew the line at opening drawers and cupboards when looking for evidence of another person living in the property. The issue is whether Martin's inspection was as ought reasonably to have been made. Only if that is the case will Les be without notice of Martin's interest.

If Les employed a surveyor to inspect the land, we must hope that there were no signs of Martin when the surveyor called to inspect (note: *Kingsnorth Finance Ltd v Tizard* [1986] see pp.79-81). This is because of the imputed notice rule (s.199(1)(ii)(b) LPA 1925; see p.79). If a purchaser employs an agent then any (actual or constructive) notice which comes to that agent is automatically attributed to the purchaser with the result that he is bound by the relevant equitable interest.

Dan's claim

As the document granting the lease is not a deed, Dan has only got an equitable lease. Post 1925 such a lease is not subject to the doctrine of notice. It is registrable as an 'Estate Contract' land charge (s. 2(4)(iv)) LCA 1972; see 4.7.3). It is unlikely that Dan (who probably did not take legal advice) will have registered the Class C(iv) land charge. If he has not registered then his equitable lease will be void against Les, as Les is (apparently) a purchaser for money or money's worth of a legal estate (see s.4(6) LCA 1972 and *Midland Bank v Green* [1981] 1 AC 513). Moreover it will be void against Les even if he actually knew of the equitable lease (*Hollington Brothers v Rhodes* [1951] 2 All ER 578; see 4.7).

Harry's claim

Whether the restrictive covenant benefiting Blackview binds Les may well depend upon the date it was entered into. The deed produced by Harry must be carefully examined to see whether or not it was executed after 1925.

If it transpires that the 'residential purposes' only covenant was entered into after 1925, then it will be registrable as a land charge (s.2(5)(ii) LCA1972: D(ii) Land Charge). It will only bind Les if it was correctly registered as a land charge against the name of the owner of Grand Villa who (back in the 'twenties') entered into the restrictive covenant (s.3 LCA 1972). If the covenant was not correctly registered it will be void against Les, even if he knew about the covenant through looking at the title deeds (s.4(6) LCA 1972). If the covenant was entered into before 1926 then it will not be registrable as a land charge; it will be subject to the doctrine of notice.

As mentioned earlier, the purchaser of land is expected to investigate the title deeds. If Les inspected the deeds and saw the restrictive covenant mentioned, he would have actual notice. If his solicitor inspected the deeds and saw the covenant, Les would have imputed notice.

If Les (or his solicitor) failed to investigate title properly, with the result that the covenant ought to have been discovered from the deeds but wasn't, then Les will have constructive (or constructive imputed) notice.

The duty to investigate deeds is not however a duty to investigate documents back to the time immemorial. It is a duty to go back to the 'root of title'; the root is the most recent conveyance which is at least fifteen years old (s.25(1) LPA 1969; see pp. 1.4.3 and 4.2). When Les purchased Grand Villa the root would have been the conveyance to Ruth in 1970. If (as is possible) the 'residential only' covenant is not mentioned in that conveyance (nor in any later document such as a mortgage of Grand Villa produced by Ruth to Les or his solicitor), then Les will not have notice of the covenant and will not be bound by it.