

Squatters & Adverse Possession

Despite the criminalising of trespass, squatters may still be able to access registration of title 'through the back door'. Martin Wilks examines a recent High Court judgment and its significance for residential landlords.

The Background

In the March edition of First Comment we highlighted new legislation introduced on 1st September 2012 in the form of Section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act (LASPOA) to alleviate public concern about the harm that trespassers can cause. A criminal offence is now committed where:

- a person occupies a residential building having entered it as a trespasser;
- the person knows or ought to have known that he or she is a trespasser; and
- the person is living in the building or intends to live there for a period.

However, this change in legislation has raised questions about how it would affect claims of adverse possession, where a squatter had been occupying a residential building for several years. There is a long held view in English law that there cannot be a successful claim where there has been some form of criminal wrongdoing.

New Considerations

One recent High Court case highlights the significance of this point and bears reflection. A property (35 Church Road), had been vandalised and left empty since 1997 after the owner had died.

Mr Best, the claimant squatter, entered the property in 2000 and carried out works to the fabric of the building with the intention of making it his permanent residence. He moved in at the end of January 2012 and said that he had treated it as his own since 2001. There had been no disputes about the possession of the property during this time.

As of 1 September 2012, when s.144 LASPOA came into force Mr Best had been living in the property in breach of criminal law. As a result, the Land Chief Registrar rejected Mr Best's application for adverse possession on the basis that the new Act prevented Mr Best from relying on any period of adverse possession which involved a criminal offence i.e. the possession should not have constituted a criminal offence for any part of the ten-year period of adverse possession relied on. Mr Best subsequently challenged the decision.

The High Court found in favour of Mr Best and rejected the Chief Land Registrar's decision. The High Court held that a squatter in a residential property could acquire title to it through adverse possession even though squatting in residential property is now a criminal offence under s.144 LASPOA.

Consequences This case points up three interesting and potentially critical insights:

1. It is now clear that the aim of the new Act is to give residential owners access to immediate police action and not to disrupt the adverse possession regime. This is summarised succinctly by Mr Justice Ouseley in the case judgment:

"The purpose of s144 was not to affect the acquisition of title by adverse possession, which takes years of possession, but to enable the landowner, excluded or dispossessed by trespassers probably in short term occupation after a period of absence by the landowner, to call upon the support of the police and the coercive effect of criminal law to recover possession, rather than having to wait for the slower and less immediately effective workings of civil justice through possession actions."

2. The case also highlights a strong public interest in recognising title where adverse possession has continued for a period without objection from the registered property owner.

"Parliament should be taken to have thought that the public policy advantages of adverse possession at common law meant that the mere fact that the adverse possession was based on criminal trespass did not and should not preclude a successful claim to adverse possession."

3. Residential property owners should be aware that despite the new legislation, squatters will still be able to obtain adverse possession of residential buildings.

In light of these factors, residential property owners would do well to observe a few simple precautions:

- Ensure unoccupied buildings are secured and alarmed. Act quickly, for instance, following the expiry, surrender or forfeiture of a lease and the exit of a tenant.
- Check on the property regularly to see if there are any signs of attempted entry.
- Remove any articles of value internally and externally.
- Check insurance details to see if cover is provided for intrusions and any other costs such as damage to the property. Consult with the insurer on the measures that should be taken - a risk assessment may detail requirements for a particular site, for example, the removal of certain items or machinery.
- Provide regular security patrols if necessary.
- Turn off and disconnect utilities.
- Consider letting the property on a temporary trading basis or short-term agreements, for example, for a period of six months.

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