Neutral Citation Number: [2022] EWHC 1855 (Ch)

Appeal Ref: QB/2020/006

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
CHANCERY APPEALS (ChD)

Leeds Combined Court Centre
Oxford Row
Leeds
LS1 3BG

22/07/2022

Before :

MR JUSTICE FANCOURT
Vice-Chancellor of the County Palatine of Lancaster

- -

Between :

CALVERLEY VILLAGE DAY NURSERY LIMITED

Appellant/

Claimant

- and –

(1) CATHERINE DEBORAH LYNCH
(2) SELECT PRODUCTS (YORKSHIRE) LTD

Respondents/
Defendants

- -
- -

Zoë Barton QC (instructed by **Land Law LLP**) for the **Appellant**
Andrew Skelly (instructed by **Hägen Wolf Solicitors**) for the **Respondent**

Hearing dates: 6, 7 July 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FANCOURT

This judgment has been handed down by the court remotely, by circulation to the parties' legal representatives by email, and to The National Archives.

Mr Justice Fancourt :

1. The main issue on this appeal is whether there was sufficient evidence of possession of land and intention to possess it by 13 October 1991 to entitle the trial judge to conclude that, by virtue of 12 years' adverse possession, title to that land was held on trust for the predecessors in title of the First Respondent (Mrs Lynch) by 13 October 2003.

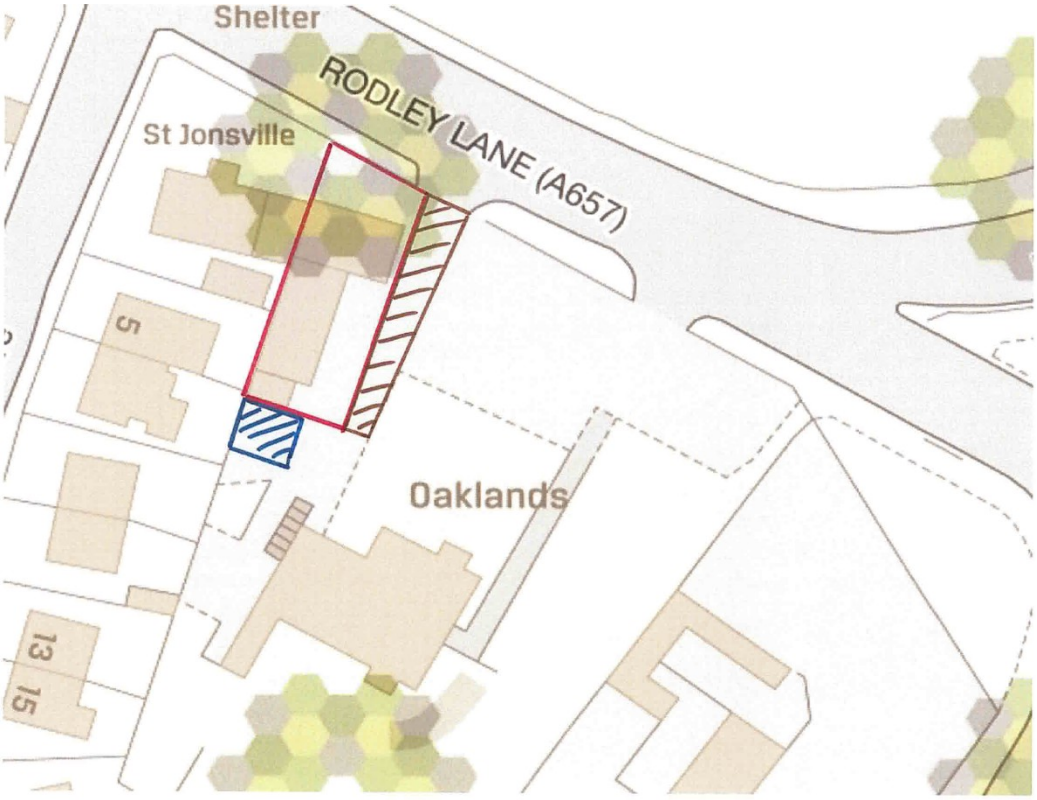
2. The land in dispute is a relatively small area of land to the rear of a commercial property known as 57 Rodley Lane, Leeds, ("No. 57") of which Mrs Lynch is now the registered proprietor. That property immediately adjoins a larger commercial property known as 55 Rodley Lane, Leeds, ("No. 55") title to which is now vested in the Appellant ("Calverley"). The disputed land, title to which the Judge held is held in trust for Mrs Lynch, was part of No.55. Calverley bought No.55 from Mr and Mrs Psarias in 2018 with knowledge that Mrs Lynch and the Second Respondent ("Select") were alleging that they had the right to keep containers and other materials on the disputed land.

3. The proceedings started in Leeds County Court on 10 September 2018 with Calverley alleging that Select (which occupied No.57 under licence from Mrs Lynch) was trespassing on No.55 in three respects. First, by parking cars on the car park area at the front of No.55 without permission. Second, by parking vehicles and placing skips on the area of a right of way granted to No.57 by a transfer dated 16 July 1991 ("the Transfer") from Mr and Mrs Psarias to Mr Lynch and Mr Spence. Third, by leaving a metal container on a part of No.55 immediately to the rear of No.57.

4. Mrs Lynch and Select denied the trespasses and counterclaimed, first, rectification of the Transfer, to include in their title identified land to the rear of No.57 and an extended right of way, which they said had been omitted from the Transfer by common mistake; second and alternatively, a declaration that Calverley as successor in title to Mr and Mrs Psarias was estopped from denying that Mrs Lynch had title to that land and right of way; and third, in the further alternative, a declaration that Mrs Lynch was entitled to be registered as proprietor of the land by reason of adverse possession.

5. All these issues were tried by HHJ Gosnell between 6 and 8 August 2019, with written closing submissions delivered on 27 September 2019. The Judge dismissed all the Claimant's claims of trespass and the Defendants' counterclaims for rectification and relief by way of estoppel, but he found that the claim based on adverse possession of a smaller area of the land to the rear of No.57 was proved, such that before 13 October 2003 Mr and Mrs Psarias held that land in trust for the owners of No.57 pursuant to s.75 of the Land Registration Act 1925. He indicated, without giving any reasons, that he would have reached the same conclusion under the provisions of Schedule 6 to the Land Registration Act 2002 if 12 years' adverse possession had not been completed by 13 October 2003.

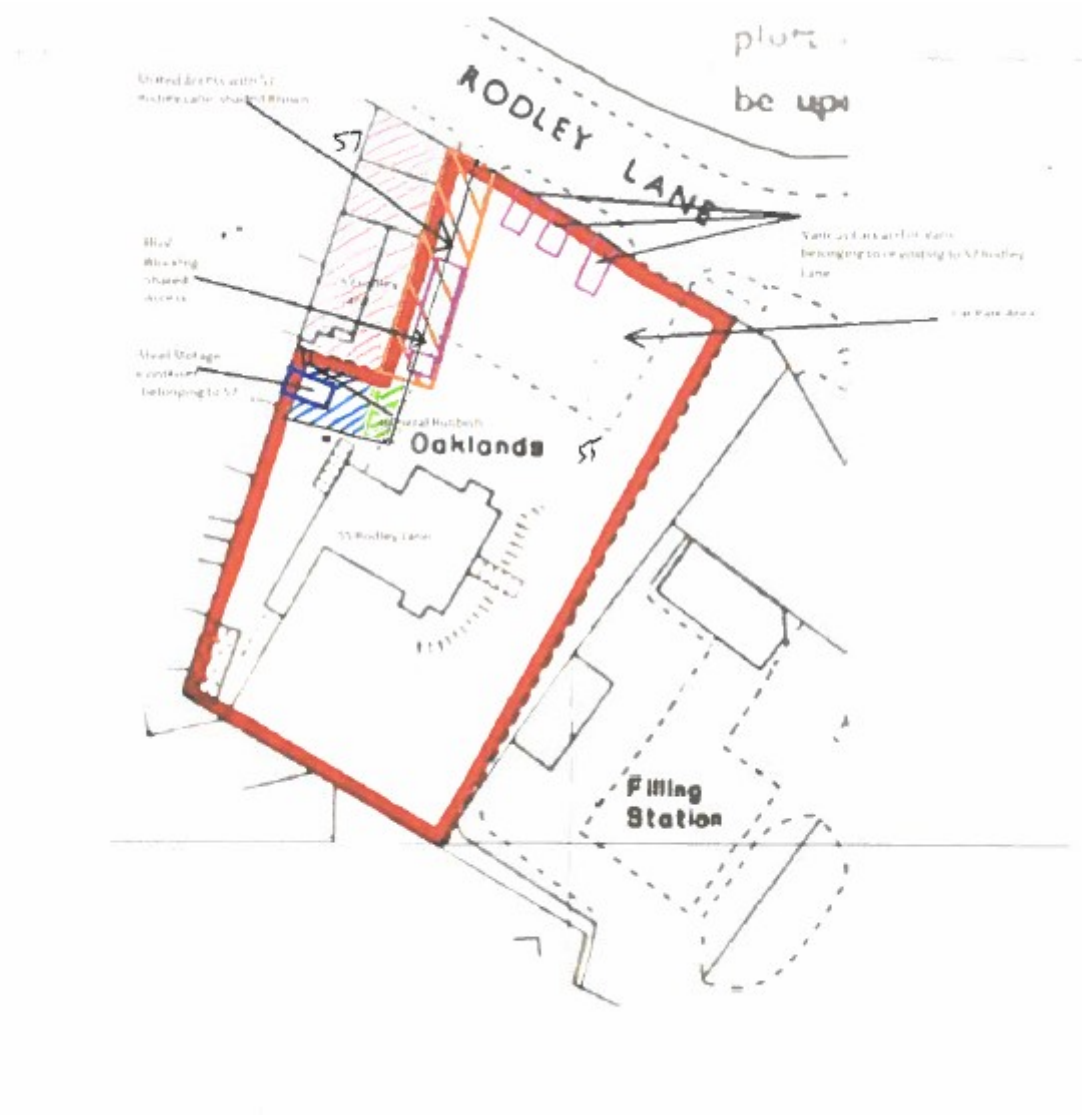
6. The Judge declared by Order of 8 January 2020 that the registered land described in the schedule to his Order was held in trust for Mrs Lynch, who was entitled to be registered as proprietor of it. The schedule contained particulars of the land in question and stated



that it was shown, for the purposes of identification only, on the attached plan. The plan attached to the Order is the following, which shows the land held in trust ("the disputed land") hatched blue:

7. Calverley appeals against the Judge's decision on adverse possession with permission granted by Mr Justice Snowden. There is no respondent's notice relied on by Mrs Lynch or Select.

8. The areas of land that are relevant to the appeal are shown on the following diagram, which is based on the plan within the Defence and Counterclaim but is illustrative only and not to scale:



9. No.55 is the larger property edged orange and fronts Rodley Lane to the north. No.57 is the smaller property to the west of No.55 and is hatched orange, also fronting Rodley Lane. No.57 comprises a small area of open land between the buildings and the highway, then a dwelling, referred to in the judgment as "the cottage", and immediately behind and adjoining the cottage there is what is now (and has been since about 1993) a showroom and offices. These look roughly east onto an area of open but surfaced land between the buildings and the brown hatched land within No.55, which is the land over which No.57 enjoys a right of way.

10. The rectangle of land hatched blue on the diagram is the land that the Respondents claimed by rectification of the Transfer, by estoppel or by adverse possession ("the Blue Land"). The smaller rectangle edged blue within the Blue Land marks the location of a large storage container that Calverley pleaded was trespassing on No.55. The rectangle of land hatched green is the land over which the Respondents claimed the extension of the right of way. The extent to which the adverse possession claim succeeded can be seen by comparing the Blue Land on the diagram with the land hatched blue on the Order plan.

11. Until 16 July 1991, all these areas of land were within the single ownership of Mr and Mrs Psarias. The house on No.55 was habitable but the buildings behind the house were run down outbuildings in need of complete refurbishment. At the rear of the outbuildings, adjoining the Blue Land, was an outdoor toilet block built on a raised stone step ("the Platform") running across the back of the building.

12. It is common ground that, after purchase of No.57 pursuant to the Transfer, Messrs Lynch and Spence carried out extensive refurbishment of the buildings on No.57. There was an existing planning permission for change of use and alterations. Mr Spence was principally involved with the acquisition and development work and Mr Lynch was primarily engaged carrying on their business from other locations. Their title to No.57 was not registered until September 1991. A new planning permission, also for change of use and alterations, was applied for on 13 December 1991 and granted on 20 February 1992.

13. Following acquisition, the refurbishment works started and were not completed until either late 1992 or early 1993. From about February 1993 the refurbished buildings were occupied as a showroom and offices in connection with Mr Lynch and Mr Spence's business. (At about the same time, Mr Spence left the business.)

14. The evidence, stated broadly, was to the effect that from shortly after acquisition and at all times since then the owners of No.57 kept a skip on the land to the rear of their property. This was initially used in connection with the refurbishment works and then used in connection with the businesses run successively by Mr Lynch and Select. The businesses were the sale and fitting of conservatories, windows and doors, and the fitters used the skip to the rear of No.57, or other skips kept in other locations, to dispose of builders' rubble and unwanted materials arising in connection with the business.

15. In order for the Respondents to succeed on their case of adverse possession of the Blue Land under the old regime in the Land Registration Act 1925 and Limitation Act 1980, there needed to be 12 years' adverse possession before 13 October 2003, when the old regime gave way to the new regime in the Land Registration Act 2002. If 12 years' adverse possession were established, the land then became held on trust for the Respondents pursuant to s.75 of the Land Registration Act 1925. If 12 years' adverse possession had not been completed by 13 October 2003, any claim had to be brought under the new regime.

16. Under the Act of 2002, a person who claims to have possessed land for more than 10 years must apply to the Land Registry to acquire title to the land. There are then limited circumstances in which, if the registered owner objects, an applicant can be registered with title instead. Where the owner has brought proceedings for possession, the possessor cannot apply to the Land Registry but can raise a defence to the claim, if they could so have applied the day before the proceedings were issued and if the condition in para 5(4) of Schedule 6 to the Act of 2002 is satisfied: see Act of 2002, s.98(1). Para 5(4) of Schedule 6 states:

> "The third condition is that—
>
> (a) the land to which the application relates is adjacent to land belonging to the applicant,

> (b) the exact line of the boundary between the two has not been determined under rules under section 60,
>
> (c) for at least ten years of the period of adverse possession ending on the date of the application, the applicant (or any predecessor in title) reasonably believed that the land to which the application relates belonged to him, and
>
> (d) the estate to which the application relates was registered more than one year prior to the date of the application."

17. If Mr Lynch and Mr Spence had only dispossessed Mr and Mrs Psarias of the Blue Land later than 13 October 1991, the Respondents would have had to defend Calverley's possession claim under the new regime in the Act of 2002, which they did in the alternative. That would require a period of at least 10 years' adverse possession before the day before the claim form was issued, so between 2009 and 2019. It was therefore an entirely different period of adverse possession that had to be established.

18. The Judge was required to decide not just the issue of rights to the Blue Land but also the allegations of trespass in relation to the car park and the right of way. Even when he turned to the Blue Land, he had first to determine whether, by common mistake, the Transfer omitted the Blue Land and the green land, such that it should be rectified; and, if not, whether Mr and Mrs Psarias were nonetheless estopped from denying the Respondents' ownership of the Blue Land and rights over the green land prior to the sale of No.55 to Calverley.

19. The Respondents' primary case was that Mr and Mrs Psarias as vendors and Mr Lynch and Mr Spence as purchasers had agreed that the purchasers should have an area to the rear of the buildings and toilet block sufficient in size for the parking of two cars in parallel to the rear building line, so about 5 metres in width. Their alternative case was that having been registered as owners of No.57, Mr Lynch and Mr Spence noticed that the plan in the registered title did not show that they owned the Blue Land and so they raised this with Mr Psarias, who assured them, on his honour as a Greek Cypriot, that he would recognise that they owned the Blue Land.

20. The Judge rejected those claims. He found that Mr Lynch and Mr Spence may have believed that they were buying land for the parking of two cars but that Mr and Mrs Psarias probably did not agree this, either in negotiation before the purchase or in discussion about the registered title afterwards. These counterclaims, although unsuccessful, form a relevant part of the background to the determination of the adverse possession claim. That is, first, because the land that was being claimed by adverse possession was the same land that it was alleged was agreed and intended to be sold with No.57; and, second, because of the Judge's finding that Mr Lynch and Mr Spence may well have believed (albeit mistakenly) that they had a right to own an area of land sufficient for the parking of two cars behind No.57.

21. The Judge carefully reviewed the evidence and reliability of all the witnesses from whom he heard evidence. Generally, the Judge preferred the evidence of Mr Lynch and Mr Spence to that of Mr Psarias. Where Mr Lynch and Mr Spence differed in relation to discussions that took place after their registered title had been obtained, he preferred the evidence of Mr Spence. The Judge said that all of the main witnesses that he heard

from were honest but Mr Psarias was unreliable as to the timing of events. He also heard from a number of minor witnesses, which he said were not of great importance to the adverse possession claim, though in fact two of them, Mr Turner and Mr O'Grady, were able to give first-hand evidence about what was happening at No.57 from the date of the Transfer. The Judge was unimpressed by the reliability of Mr O'Grady.

22. As regards the adverse possession claim, the Judge noted that the Respondents' case was that the skip had been placed on the Blue Land from shortly after its acquisition and remained there at all times since, whereas the Appellant contended that the skip had only appeared with the demolition of the toilet block in 2004, or alternatively that if there was a skip from 1991 it was very irregular until 2004. He concluded:

> "[83] On this factual issue the evidence in favour of the Defendants is overwhelming. Several witnesses have said that a skip was present on the shaded blue land from shortly after purchase of the property in 1991 and remained there until late 2017. The evidence of Mr Psarias that whilst a skip may have been present in 1991, they were not in regular use until 2004 or 2005 is unsupportable in the light of the weight of evidence suggesting otherwise. It is also clear that the Mr Lynch also stored materials on the land both in a rack and on the ground and used it as an informal dumping ground when the skip was full. I find on the balance of probability that the Defendant's evidence is more likely to be accurate on this issue."

The several witnesses must be a reference to Mr Lynch, Mr Spence and Mr Turner. They had all said that the skip was in place shortly after the purchase and, in Mr Spence's and Mr Turner's evidence, "from the day that we took possession" and "from day one, from when they took possession of the building" respectively.

23. Having held that the adverse possession claim could not succeed as to the eastern half of the Blue Land, and that there was a question about how far to the south it extended, the Judge then set out his conclusion on the issue of adverse possession:

> "[85] The first issue however is whether the First Defendant has established on balance of probability that she, through her licensees and predecessors in title (effectively Mr Lynch and his businesses) had both an intention to possess and factual possession of part of the shaded blue land. I have to bear in mind the character of the land in question. This at the time was an open area of land which was part of a larger area used as a car park. In 1991 it was not tarmac or concrete but rough ground. Whilst it may have strengthened the Defendant's case to fence the area off, I accept it was not really practical to do so and is not essential to prove their case. *By parking on the land, placing a skip on parts of it, building a rack and filling it with materials, using it to store waste products, weeding and tidying the area over time Mr Lynch and his colleagues have effectively treated the land as if they owned it, to the exclusion of others*, including the paper owner, Mr and Mrs Psarias. There is no evidence that anyone else made use of this land at the same time nor sought to do so. *I am satisfied that this usage from mid-1991 onwards is sufficient to start the clock running* for the purposes of an adverse possession claim as Mr Lynch was possessing the land and excluding all others so far as he was able by effectively placing things on the land that would prevent any other use. I am also satisfied that

> *he had the necessary intention to possess, quite possibly fuelled by his genuine (albeit misconceived) belief that he had acquired this land when he bought the property*"

The sentences italicised are the focus of Calverley's criticism of the decision.

24. The Judge gave his reasons for being satisfied that the Respondents and their predecessors in title to No.57 had not been in possession of all of the Blue Land. He was also troubled by the fact that the extent of possession by means of the skip varied over time. There were occasions, demonstrated by photographs, when the skip was visible even to the south of the Blue Land, next to a bottle bank belonging to Mr Psarias on No.55, and on other occasions elsewhere on the Blue Land. That was particularly so after a large cream-coloured storage container was placed (in about 2016) next to the green container that stood on the Platform. However, the Judge considered that during the 12-year period from mid-1991 to mid-2003, there was an "irreducible minimum" of possession of the equivalent of two car parking spaces immediately to the south of the Platform. He stated that:

> "[87] … None of the witnesses were particularly clear where the skip was usually placed and I draw the inference that before the cream container was placed on site in 2016 it would have been much nearer the toilet block and/or green container that replaced it. Whilst there has been a certain amount of 'mission creep' over time I accept that at least initially Mr Lynch thought he was occupying the two parking spaces which no doubt he vaguely recalled having been mentioned by someone during the pre-purchase process. I find that over time, particularly during the critical twelve-year period from July 1991 to July 2003 there was an area of the shaded blue land which was always occupied by Mr Lynch's businesses, even though there may have been other times when additional land was being stealthily used. This irreducible minimum area of the blue land is the land which was permanently occupied for the requisite period …"

25. The Appellant contends that the Judge was wrong to reach that conclusion, both because there was insufficient evidence of 12 years' possession of that part of the Blue Land before 13 October 2003 and because there was insufficient evidence of intention to possess the land to the exclusion of others.

26. The appeal has been argued by Ms Zoe Barton QC on behalf of Calverley on a narrow basis, namely that the Judge failed to consider specifically whether there was evidence that Mr Lynch and Mr Spence had moved into possession of the disputed land before 13 October 1991. Ms Barton submitted that whatever the position was after that date – and she accepted that the evidence was that relatively greater use was made of parts of the Blue Land as time went on – the defence of adverse possession under the old regime could not succeed unless possession of the disputed land was established by 13 October 1991. The Judge, she said, failed to appreciate the importance of that question, and looked at the question of possession on a more generalised basis spread over the whole of the requisite 12-year period. She submitted, in particular, that the Judge reached a wrong conclusion because:

    i) he took into account proven use made of the disputed land after 13 October 1991 in reaching his conclusion that there was a 12-year period of adverse possession

that started before that date;

ii) he treated use of the disputed land as being possessory in nature, whereas it was in substance only use in the nature of an easement – parking and storage – or, at best, equivocal use that was insufficiently suggestive of dispossession of the paper owner;

iii) given the nature of the use, he was wrong to conclude that the necessary intention to possess could be inferred from the nature of the use of the land, and his conclusion that intention was attributable to the (mistaken) belief in ownership was inconsistent with his earlier conclusion that the use made of the Blue Land as a whole was more redolent of opportunistic use of land that happened to be available.

27. It was not suggested by Ms Barton that the Judge misdirected himself on the relevant law. The Judge referred to the recent Court of Appeal decision in Thorpe v Frank [2019] EWCA Civ 150; [2019] 1 WLR 6217, in which McCombe LJ summarised the law of adverse possession under the old regime by referring to the leading decision of JA Pye (Oxford) Ltd v Graham [2002] UKHL 30; [2003] 1 AC 419, which itself endorsed the well-known judgment of Slade J in Powell v McFarlane (1977) 38 P&CR 452 on the nature of the factual possession and intention to possess that have to be proved, which includes the following passage:

> "The question what acts constitute a sufficient degree of physical control must depend on the circumstances, in particular the nature of the land and the manner in which land of that nature is commonly used or enjoyed... Everything must depend on the particular circumstances, but broadly, I think what must be shown as constituting factual possession is that the alleged possessor has been dealing with the land in question as an occupying owner might have been expected to deal with it and that no-one else has done so."

28. The facts of Thorpe v Frank are illustrative of the kind of use that may amount to dispossession of the paper owner with the necessary intention to own the land. In that case, excavating and preparing an area of shared driveway and laying large paving slabs was held to be an act in the nature of ownership and sufficient to start time running. The fact that the neighbours for a time passed and re-passed over the new surface did not mean that the possessor did not enjoy possession.

29. Ms Barton criticised the judgment for failing to address the particularly important question of whether the Psariases had been dispossessed of the Blue Land or any part of it before 13 October 1991. She suggested that the Judge dealt in general terms with the nature of the use of the Blue Land made by Mr Lynch and Mr Spence over a 12-year period from July 1991 to July 2003 but failed to appreciate that it was essential that dispossession before 13 October 1991 be specifically proved. In looking at the matter more generally, she said, the Judge fell into the same error as the trial judge in Tennant v Adamczyk [2005] EWCA Civ 1239; [2006] 1 P&CR 28, who, in a very similar case where the same issue about dispossession prior to 13 October 1991 arose, relied on proven use by the possessor after that date in reaching a conclusion about the quality of use before it, and by doing so concluded that the limitation period started to run before the critical date.

30. In the Tennant case, use by temporary parking and turning of vehicles and the storage of stock had begun in June 1991 and the area used was later fenced off by the possessor, but the acts of fencing occurred after the crucial date of 13 October 1991. The judge himself had identified the importance of the period June to October 1991 and relied on the later erection of the fence as an "affirmation" of the position that had existed from June 1991, concluding that there had been no change in the use made of the relevant land from June 1991. Mummery LJ held that the judge was clearly wrong to have approached the matter in that way. It was obvious that he had taken into account the erection of the fence, but he should have approached the matter without regard to events of a different character occurring after 13 October 1991 and asked himself what factual possession of the relevant land there was between June and October 1991. Whether or not there was an intention to possess had to be inferred based on the nature of the use of the land during that period. The acts during that period were not by their nature asserting exclusive possession of the land used.

31. Ms Barton also seemed to rely on the Tennant case for the proposition that incidental or accessory use connected with the use of other land owned by the possessor does not have the requisite character of possession adverse to the world. I do not consider that the case stands as authority for that proposition, though Mummery LJ did advert to the fact that the primary use by the claimant was of their own land and that the use of the adjoining yard was incidental to that use. Every case of this kind depends on its own particular facts and requires a careful assessment of the quality of the use and the nature of the land involved.

32. By virtue of the sentences of para 85 of the judgment, which I have italicised in para 23 above, Calverley nevertheless submits that Judge Gosnell made the same mistake that the judge in Tennant did. He did not, as that judge had done, advert specifically to the importance of establishing dispossession of the Psariases before 13 October 1991, but he did cite the building of a rack by Mr Lynch, filling it with materials and using it to store products, which it is accepted did not happen until later in the history of use of the Blue Land. In para 85, the Judge concludes that by doing all the matters identified, Mr Lynch "over time" effectively treated the disputed land as his own. Later in the same paragraph, he refers to "this usage" from mid-1991 onwards being sufficient to start the limitation clock.

33. It is clear from other parts of the judgment that the Judge had fully in mind the importance of the 13 October 1991 date. I do not accept that he lost sight of its importance. The Judge was also well aware that certain changes in the use of the land, e.g. the positioning of the green container on the Platform and the placing of the cream-coloured storage unit next to it, happened at a later time: he dealt with these in the same section of his judgment, at para 81. In the same paragraph, as part of the narrative of the changes of use of the land, he refers to the racking being installed "at some point". In context, this is clearly a point between the two previous events of 2004 and the event of 2016, as he is dealing with the events chronologically.

34. What is less clear is whether the Judge was relying on the combined effect throughout the 12year period of "this usage" – which must be read as a reference to all the uses previously listed – or relying on the particular uses distributively throughout the period. There was no suggestion that the racking was present in 1991, but there was evidence that there was car parking and the skip from the outset, i.e. from July 1991.

35. Ultimately, I do not consider that it matters whether the Judge did wrap up the use of the racking for storage with the uses that occurred before 13 October 1991 (and on balance I am persuaded that he did not, despite the ambiguous language of the key paragraphs of his judgment). That is because I am satisfied in any event that the evidence of Mr Spence (in particular) about parking on that part of the Blue Land from the outset and the placing of the skip from the same time was sufficient to establish possession of the disputed land.

36. The "overwhelming" evidence about use of the skip, which included evidence that it started as soon as possession of the property was taken following the Transfer, and Mr Spence's evidence in cross-examination (p.559C) " … two spaces agreed …I used to park my car there, I remember doing it from day one" meant that there was evidence that the owners of No.57 occupied the disputed land before 13 October 1991.

37. The skip, the car and the racking could not all be on two parking spaces at the same time. Indeed, it appears to be the case that it was only as a result of the later introduction of the cream-coloured container and the racking, which took up at least two parking spaces, that the skip was relocated onto a part of the Blue Land (or even off the Blue Land) near the bottle bank. If the Judge accepted, as it is evident that he did, the evidence of Mr Spence and others about parking and placing a skip on the disputed land, then there was no real space for the racking and associated storage unless the skip and car were moved.

38. The next question is whether the use of the disputed land in the way that the Judge found proved was sufficient to dispossess its owner.

39. There is no doubt that making temporary use of land for parking and storage, even for a prolonged period of time, can be in the nature of an easement, in which case the person making use does not, by definition, have exclusive possession of the land. In other cases, however, the use can amount to possession adverse to the paper owner and others. Whether it is one thing or the other depends on the facts of the individual case. It is also necessary to bear in mind – as Slade J and all judges informed by his judgment have emphasised – that it is not only a matter of the extent and nature of physical use of the land but the intention with which the possessor makes that use. Sometimes the intention is obvious from the use, because it is exclusive and permanent; in other cases, the use is said to be "equivocal", which places a distinct burden on the possessor to prove that they intended to own the land rather than just make use of it.

40. Ms Barton relied on the fact that the uses in question, parking and storage, are the kinds of use that are "equivocal" and which are not of their nature rights of ownership. By "equivocal", I think what she meant was that the uses in question are not the types of action that signify use by an owner, as opposed to someone who has more limited rights, and that the uses are not of a permanent and exclusive character.

41. She relied on the decision of a Deputy High Court Judge in Central Midlands Estates Ltd v Leicester Dyers Ltd (21.1.02), reported only in a digest but of which a full transcript was made available to me, in which parking took place on some waste land adjoining the verge of an access road to an industrial estate. The defendant claimed adverse possession and acquisition of an easement of parking in the alternative. The Deputy Judge considered that in the absence of any other signs of ownership, parking

by employees on a piece of waste land was not evidence of taking possession or intention to own the land.

42. In Nata Lee Ltd v Abid [2014] EWCA Civ 1652; [2015] 2 P&CR 3, parking on a strip of land between the parties' adjoining properties was held to be insufficient, either itself or with minor cleaning and tidying activities, to amount to a taking of possession. But there the parking on the disputed land was found not to have occupied all of it, nor did it exclude the paper owner from its natural use of that land, principally as a means of access to the side of its warehouse.

43. It is of course not the descriptive label that is given to a kind of use but the character of the use in the particular case that has to be considered. In this case, the skip was placed on the disputed land on day 1 and the evidence was that it remained there throughout. I accept, as the Judge did, that in a photograph of No.57 taken for a valuation report in 1993 the skip is not visible. The evidence was that it may have been moved on that occasion, while formal photographs of the completed renovation works were taken. Subject to that, the evidence was that the skip was there throughout, until 2017. It served a purpose for the renovation works from 1991 to 1993 and continued to serve a purpose in connection with waste from Mr Lynch's business thereafter. It would of course have been removed by the skip company from time to time, when full, and replaced (not always in exactly the same place) by an empty skip.

44. While a large builder's skip is not a permanent addition to the disputed land, it was, on the facts of this case, a semi-permanent feature that takes up all of a single parking space. The other space was used in the relevant period by Mr Spence to park his car whenever he was at No.57. He was the person in charge of the renovation works.

45. The disputed land, as opposed to the Blue Land, is only two car parking spaces. The Judge decided that the width of the land was 5 metres from the edge of the Platform (on which the green container was sited). From examining during the argument photographs of the area at a later time, when the cream-coloured container was in position, it is clear that the length of the disputed land is slightly but not much greater than the length of a large car. The cream-coloured container took up the whole of the length of the area identified by the Judge. That means that the combination of a skip and parked car would have taken up practically all of the disputed land. It is not disputed that there was no attempt by the owners of No.55 during the 12-year period or before the start of the proceedings to make use of the disputed land themselves, nor according to the evidence did anyone else do so.

46. Throughout the period from 1991 to 2003, the disputed land was unimproved. It had a rougher, unfinished surface compared with the tarmacked surface of the rest of the car park on No.55. The line between the edge of the tarmac and the start of the disputed land is visible on some of the photographs. The rougher area of land next to the tarmac continues down to the bottle bank to the side of the external staircase leading to the first floor of the building on No.55. This was therefore, by its nature and location, tucked away behind No.57 and to the side of the building, a left over, unimproved piece of land immediately adjoining a car park with a finished surface. The only use of the area made of it by the Psariases was to site a bottle bank and to park. There is no evidence that it was otherwise used by them during the relevant 12-year period. Although the Judge did not describe the land in quite this way, he referred to it as a piece of rough ground. In my judgment, the evidence establishes that during the period under

challenge the owners of No.57 used the disputed land in exactly the way that an owner would make use of it.

47. What makes the difference in this case is the combination of the size, location and nature of the disputed land and the extent and character of the use made of it by Mr Lynch and Mr Spence. They took and made effective and exclusive use of the disputed land during the period in question. When used by them, there was no space for anyone else to make use of it. Indeed, Mr Lynch's use later spilled over onto the adjoining land. This was not use in the nature of an easement. Considered on its own, the parking of a car might be considered to be equivocal, but in combination with the use of the adjoining space for a skip, this consistent use was in the character of possession of that specific area, being enjoyed with No.57. The position would of course have been different if Mr Lynch and Mr Spence had made use of whatever space was free in the car park from time to time.

48. What tends to reinforce the conclusion about possession is the fact that, as the Judge accepted, Mr Lynch and Mr Spence mistakenly believed that they were getting the equivalent of two parking spaces immediately behind No.57 when they bought it. That belief, even though mistaken, would naturally have led them to make use of the area of land as their own. The mistaken belief is itself evidence of an intention to own the disputed land.

49. Calverley criticises the Judge's conclusion that there was evidence of intention to possess the disputed land. Its main argument here is that the Judge was wrong to find that Mr Lynch's intention was quite possibly fuelled by the mistaken belief in ownership, given that in para 74 he had apparently held that treating the Blue Land as his own was more consistent with Mr Lynch using whatever land he could, given the reticence of the Psariases to object.

50. I have considered carefully whether there is an inconsistency here. If there was, it would tend to undermine the Judge's finding that Mr Lynch had the requisite intention to possess because of a belief in ownership. However, I do not consider that para 74 is inconsistent with the last sentence of para 85 of the judgment.

51. In para 74, the Judge is addressing the principal argument of the Respondents at trial, namely that the Transfer should be rectified to include the Blue Land and an easement over the green land because that is what vendors and purchaser had agreed and understood would be its effect. The rectification claim, like the estoppel and adverse possession claims, was made in relation to the Blue Land, not just the disputed land. The Judge therefore had to consider whether there was a pre-contract agreement or understanding that the Blue Land and an easement over the green land would be included in the Transfer. What the Judge is rejecting in para 74 is the argument that actual use made of the Blue Land was evidence of such an agreement. He rejected that on the basis that use made by Mr Lynch spread beyond the two parking spaces that he and Mr Spence said they believed they owned, and was evidence of Mr Lynch helping himself to whatever was available rather than evidence of a belief in ownership of the Blue Land.

52. There was throughout the trial a difficulty with the Respondents' claim to a larger area of land, the Blue Land, as compared with the smaller area of two car parking spaces that Mr Lynch and Mr Spence both said that they thought they had purchased. Mr

Lynch in evidence was unable to be precise about what he said was the extent of the land claimed. The conclusion that the Judge reached is consistent with accepting a (mistaken) belief that the equivalent of two car parking spaces was part of the land purchased, but of course such a belief does not begin to prove a belief in ownership of a larger area of land. For this reason, there is no inconsistency between paras 74 and 85 of the judgment and in my view the Judge was not just entitled but right to take account of it.

53. As for intention more generally, the Judge was entitled on the evidence to conclude that the skip and parking use from June 1991 manifested an intention to own rather than merely use the disputed land. The intention was demonstrated by placing a semi-permanent skip on half the disputed land. As for the potentially equivocal car parking, this has to be considered not in isolation but in the context of the nature of the land in question, its location, the use of the adjoining space and the belief of Mr Lynch and Mr Spence in ownership. It was the overspill onto other parts of the Blue Land that was opportunistic, or as the Judge characterised it, "mission creep". That overspill did not however detract from the consistent use of the land nearest to the Platform. It occurred because other items, such as the racking and cream-coloured container, were later placed onto the disputed land.

54. Calverley pointed out that Mr Lynch and Mr Spence had gone to considerable trouble to improve No.57, including the laying of paving slabs or bricks to form a surround and terrace area between the showroom and the right of way. However, no improvement was made to the surface of the disputed land. I am unable to see any real significance in this. The disputed land was tucked behind the showroom, by the toilet block, away from sight of customers visiting the showroom and was used for the placing of a skip, a car and stock. It cannot be said that a failure to improve the area is evidence that they did not intend to possess the two parking spaces.

55. Had it been necessary to consider the alternative basis on which the Judge indicated that he would have found for the Respondents, pursuant to the Act of 2002, I would have been unable to uphold that conclusion without further reasons being given by the Judge. As noted above, the period of adverse possession is then wholly different, 2009 to 2019 instead of 1991 to 2003, and it included a period of two years after removal of the skip and ended at a time when, according to the Claimant's claim, there was only one storage container in a different position on the Blue Land. There were no reasons given for a conclusion (if one was reached) that the conditions in para 5(4) of Schedule 6 to the Act of 2002 were satisfied. As my decision in Dowse v City of Bradford [2020] UKUT 202 (LC); [2021] 1 P&CR 8 establishes, the essence of this paragraph is a mistaken but reasonable belief as to the correct position of a general boundary. It is unclear whether the Judge would have concluded that Mr Lynch's and Mr Spence's belief that the disputed land was within the boundary was a reasonable one in the circumstances.

56. However, for all the reasons I have given in relation to the claim under the old adverse possession regime, despite the excellent arguments on behalf of Calverley advanced by Ms Barton I dismiss their appeal. Whether the Respondents have a right to access the disputed land with vehicles is a matter that was beyond the scope of this appeal.