



REF/2006/0084

**THE ADJUDICATOR TO HER MAJESTY'S LAND REGISTRY
LAND REGISTRATION ACT 2002**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Pilling Parish Council

APPLICANT

and

Stephen Wells

RESPONDENT

**Property Address: Land being the foreshore of the North side of Fluke Hall Lane,
Pilling, Lancashire
Title Number: LAN 1541**

Before: Mr Cousins sitting as The Adjudicator to HM Land Registry

Sitting at: Preston Combined Court Centre

On: Monday 5 March 2007

Applicant Representation: Mr Wayne Nathan Goldstein, of Counsel, instructed by
Messrs Thurnhills Solicitors
Respondent Representation: Mr Paul Stookes of Counsel, instructed by Messrs Richard
Buxton Solicitors

DECISION

KEYWORDS: Land Registration Act 2002, s 65, Schedule 4 - rectification or closure of the register – locus standi of the Applicant as parish council to make application when no assertion as to title, right or interest in the registered title – Local Government Act 1972, ss

222, 111 – the ability of the Applicant to make the application in the exercise of its statutory powers or functions -

Cases referred to:

Wilson v the Decision of the Lands Tribunal 8th June 1999 Court of Session (0111/17/16a. 1998, 2000 SLT 26)

THE APPLICATION

1. By an application dated 27th April 2005 Pilling Parish Council (“the Applicant”) has applied to HM Land Registry for rectification or closure of part of the title of land comprising a section of the foreshore lying to the North of Fluke Hall Lane, Pilling, Lancashire. This is registered with possessory title at HM Land Registry under title number LAN 1541. The registered proprietor of the title is Mr Stephen Wells (“the Respondent”). The extent of the property registered is shown edged red on the title plan which for the purposes of this application is referred to as the Notice Plan. The area the subject of the application for rectification or closure is shown tinted blue on the Notice Plan (“the Disputed Land”).
2. The basis of the application is that the Respondent has not in fact used, enjoyed or had exclusive use of the Disputed Land as is asserted in his Statutory Declaration dated 3rd December 2004 which was lodged with the application for first registration of the land subsequently registered under title number LAN 1541.
3. I should state that I am not required at this stage to deal with the substantive issues in this case. The reason for this is that on 30th June 2006 the Deputy Adjudicator gave directions for determination of a preliminary issue pursuant to Rule 31 of the Adjudicator to Her Majesty’s Land Registry (Practice and Procedure) Rules 2003. On 5th March 2007 there was an oral hearing of the preliminary issue at which the parties and their representatives were present.

THE PRELIMINARY ISSUE

4. This comprises two limbs in the following terms - whether the referred application should be cancelled because the Applicant:

- (a) does not assert that it has an estate, right or interest adverse to, or in derogation of, the Respondent's title subsisting at the time of registration of the Respondent's title or then capable of arising; nor
- (b) can it show that the original application dated 27th April 2005 was made in exercise of a statutory power or function.

THE ISSUES IN THE CASE

- 5. The preliminary issue raises interesting points. There are two essential features, namely (1) whether the Applicant has any *locus standi* and (1) whether the application seeking rectification or closure of the title was made pursuant to any statutory authority.

Locus Standi

- 6. The essential point raised by the Respondent is that as the Applicant has no claim to any interest, right or title in the Disputed Land (which is conceded) it is not entitled to pursue a claim for rectification or closure of the Respondent's title. It is contended that the need for standing and sufficient interest in any such application is consistent with the primary objectives of land registration, namely that there should be certainty in land ownership. It is, however, acknowledged that the provisions of the Land Registration Act 2002 ("the 2002 Act") and the Land Registration Rules 2003 and ancillary guidance are silent on who may apply for rectification of title. Despite this it is submitted that it is an essential pre-requisite to any such application that the person seeking to make such an application has a proprietary interest in the Disputed Land.
- 7. In paragraphs 15 and 16 of the Respondent's skeleton argument support for this proposition is sought from text books. In particular reference is made to Ruoff and Roper work *Registered Conveyancing* as to the principle of indefeasibility of title and that the register should be a complete and accurate record of the state of the title to land. At the same, however, it is recognised that in the position where the land is registered with an estate with a title less than absolute the registrar may need to alter the register to give effect to some superior estate or interest whose priority has been preserved since the estate was first registered. (see paragraph 46.02).

8. In short, it is submitted that an application for rectification should seek to strengthen the register rather than to give rise to greater uncertainty. If the Applicant's claim for rectification were to be successful, the Disputed Land would then have to be de-registered and it there would then apparently have no owner.

Statutory power or function

9. The second point, the subject of the preliminary issue, is whether the Applicant in making the application is doing so in the exercise of a statutory power or function. This raises the point as to the status of the Applicant as a parish council and its ability to prosecute or defend legal proceedings pursuant to section 222(1) of the Local Government Act 1972 ("the 1972 Act").
10. The Applicant contends that it can demonstrate that the application made to rectify or close the title is made in the exercise of the statutory power given to it under that section. The Respondent argues that although a parish council falls within the definition of section 270(1) of the 1972 Act it does not include a right to make an application in the current circumstances as this is an extension of an action which is itself not lawful on the basis the Applicant has no *locus standi* in the first place. In other words any power to bring proceedings contained in the section cannot provide an entitlement to commence proceedings when none exists by virtue of the fact that the Applicant has no *locus standi*.

THE LEGAL POSITION

11. As I have stated above, as this is a trial of a preliminary issue I am not concerned about the merits of the case. It is therefore necessary to try and separate the merits from the two issues before me.
12. In the first instance it is necessary to look at the provisions contained in the 2002 Act with regard to alteration of the register.

The 2002 Act, section 65 and schedule 4

13. The starting point for the analysis as to *locus standi* is the consideration of section 65 of the 2002 Act ("alteration of the register"). This then refers to Schedule 4, paragraph 1 of which provides as follows:

“In this Schedule, references to rectification, in relation to alteration of the register, are to alteration which –

- (a) involves the correction of a mistake, and
- (b) prejudicially affects the title of a registered proprietor.”

Paragraphs 2 to 4 then deal with the position where alteration is made pursuant to a court order. It is to be noted that these paragraphs have some differences in wording to that contained in paragraphs 5 to 7 (“alteration otherwise than pursuant to a court order”), but these are not material for present purposes.

14. It is then necessary to turn to paragraphs 5 and 6 of Schedule 4. These provide as follows:

“Alteration otherwise than pursuant to a Court Order.

- 5. The registrar may alter the register for the purpose of –
 - (a) correcting a mistake,
 - (b) bringing the register up to date,
 - (c) giving effect to any estate, right or interest excepted from the effect of registration, or
 - (d) Removing a superfluous entry.

- 6. (1) This paragraph applies to the power under paragraph 5, so far as relating to rectification.
(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.

- (3) If on an application for alteration under paragraph 5 the Registrar has power to make the alteration the

application must be approved, unless there are exceptional circumstances which justify not making the alteration.

(4) In sub-paragraph (2), the reference to the title of the proprietor of a registered estate in land includes his title to any registered estate which subsists for the benefit of the estate in the land.”

15. The reference to paragraph 5 in paragraph 6(1) is to the registrar altering the register for those four specific purposes. His power, however, can only be exercised in the case of *rectification* of the register by reference to the governing circumstances set out in sub-paragraphs (2) and (3) of paragraph 6.
16. Thus, although it is not a matter for consideration at this stage, it is to be noted that under the 2002 Act there is a distinction between alteration and rectification of the Register. The concept of rectification is one particular form of alteration of the register and is limited to those cases where there is a mistake in the register which needs correction *and* which prejudicially affects the title of the registered proprietor (paragraph 1(a) and (b)). Thus not every mistake will amount to rectification. Where a mistake has been made the registrar may alter the register for the purpose of correcting the mistake under paragraph 5(a), or for giving effect to any estate, right, or interest excepted from the effect of registration under paragraph 5(c), but where such an alteration involves *rectification* (i.e. where the provisions of paragraph 1 apply), then it can only be done in the circumstances set out in paragraph 6(2) where there is no consent on the part of the registered proprietor. If on an application for alteration the registrar has such power then he has a duty to do so “unless there are exceptional circumstances which justify not making the alteration”. This duty only arises in those cases where there is rectification of the register.
17. There is therefore less opportunity for rectification under the 2002 Act than there was under the Land Registration Act 1925. This has been recognised by the Law Commission where it is stated that owing to the definition of rectification as a form of alteration that prejudicially affects the title of the registered proprietor:-

“the concept of the rectification as it is used in the Bill is narrower than it is under the Land Registration Act 1925” (see Law Comm. No. 254 (1998) paragraph 8.47 and Law Comm. No. 271 (2001) paragraph 10.13).

18. I emphasise that I do not need to deal substantively with the true construction of these provisions, and the parties’ respective submissions thereto, for the purpose of deciding this preliminary issue as to *locus standi*. The essential substantive point in that regard would seem to be whether the application for closure or rectification of the register made by the Applicant is an application which can be legitimately made by it.
19. Thus, although the point is made by the Respondent that there is a strong presumption against rectification of the register and that the prejudicial correction of mistakes in the Register only arises in the two instances set out in paragraph 3(2)(a) or (b), it is to be noted that nowhere in Schedule 4, nor indeed anywhere else in the 2002 Act, is it to be found that the person making an application for alteration or rectification is restricted to the person having an estate, right or interest in the property. This is to be contrasted with the provisions contained in the 2002 Act as to the class of person who seeks the registration of title and the basis upon which an application for registration is made (see Part 2).
20. There is a dearth of case law on the subject which is not surprising in view of the newness of the 2002 Act. The Respondent, however, does pray in aid a Scottish Court of Session decision (*Wilson v the Decision of the Lands Tribunal* 8th June 1999 0111/17/16a. 1998, 2000 SLT 267) for some guidance. This case concerned an application for the rectification of the proprietorship section of the Scottish lands register seeking to substitute Inverclyde District Council for the current owner. In that context the District Council was acting as trustee. The application, however, was not made by the District Council but by members of the public as beneficiaries under the trust. It was held that there was no entitlement to apply for rectification in the circumstances and only the District Council could apply. The oddity in this case is that the District Council had declined to enter the process and appeared to be opposed to the proposed rectification and it was the beneficiaries who were seeking to make the

“request” within the meaning of section 9(1) of the Land Registration (Scotland) Act 1979.

21. Thus, the circumstances of the *Wilson* case are very different from the current position and I do not consider that this case can be persuasive authority for the present case. Scottish land law is markedly different from that pertaining in England and Wales. Its land registration system is also markedly different. Further the facts of the case bear no relation to the facts of the current case in that the trustees making the application were seeking to have a party registered as the proprietors when that party itself was opposed to the proposed rectification. I therefore find no support for resolving this preliminary issue in that decision.

22. Having regard to the various matters set out above, I come to the conclusion that there is nothing contained in the 2002 Act, and more particularly in Schedule 4, which provides any support for the Respondent’s submission that the Applicant has no *locus standi* to make the application for rectification or closure of the register. As the Applicant’s Counsel submits, the 2002 Act could have limited the range of parties who could seek alteration or rectification of the register but did not do so. In this context it is instructive to note that the Scottish Law Commission in its discussion paper on land registration entitled “*Registration Rectification and Indemnity*” published in August 2005, notes that although an application for registration can only be made by “the person in whose favour a real right will be created or affected by registration”, in the case of rectification the legislation is silent as it is in England and Wales (paragraph 6.28 and note 40). In this context the Scottish Law Commission at paragraph 6.32 makes the proposal that only the following persons should be able to apply for rectification of the Register namely –
 - “(a) the person who holds the right in respect of which the application is being made; and
 - (b) any person who holds a real right in the same land or who has a right to acquire such a right.” (at paragraph 24(5)).”

23. This proposal is in contradistinction to the position in the law of England and Wales and also obviously does not reflect the current position in Scotland.

24. Thus in my judgment the answer to the first question posed in the Preliminary Issue is that in order to apply for an alteration in the register, or to object to an application being made for alteration, it is not necessary for the applicant or the objector to be asserting a claim to the title to, or a right to, or an interest in, the land in question.

Section 222(1) of the 1972 Act

25. Turning to the second limb of the Preliminary Issue, namely whether the Applicant has the statutory power to make the application, I agree with the Applicant's counsel that it does. The relevant provision is contained in section 222(1) of the 1972 Act, which provides as follows:-

“(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area –

1. they may prosecute or defend or appear in any legal proceedings and, in the case of the civil proceedings, may institute them in their own name, and
2. they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or on behalf of any Minister or public body under any enactment.

(2) In this section “local authority” includes the Common Council [and the London Fire and Emergency Planning Authority].”

26. Further support can be found in the provisions of section 111 of the 1972 Act with regard to subsidiary powers of local authorities:-

(1) Without prejudice to any powers exercisable apart from this section but subject to the provisions of this Act and any other enactment passed before or after this Act, a local authority shall have power to

do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.

(2) For the purposes of this section, transacting the business of a parish or community meeting or any other parish or community business shall be treated as a function of the parish or community council.

(3) A local authority shall not by virtue of this section raise money, whether by means of rates, precepts or borrowing, or lend money except in accordance with the enactments relating to those matters respectively.

(4) In this section "local authority" includes the Common Council."

27. Clearly the Applicant in its capacity as parish council considered it expedient for the promotion or protection of the interests of the inhabitants of their area to make this application which, in its perceptions, was presumably calculated to facilitate, or was conducive or incidental to, the discharge of its functions. Further, although no point was taken as to whether the proceedings before the Adjudicator are in fact "legal proceedings" or "civil proceedings" for the purposes of section 222 of the 1972 Act, the application made by Applicant resulting in the dispute being referred to the Adjudicator and then the subject matter of a contested hearing clearly falls within these definitions. In this regard it is to be noted that no application for permission to seek judicial review was ever mounted against the decision to make this application.

28. Thus, I disagree with the submission made by the Respondent's counsel that the Applicant was not entitled to make this application as it was not made in the exercise of a statutory power or function. I therefore find against the Respondent on the second limb of the Preliminary Issue.

29. A number of other subsidiary points were taken by the Respondent which were more directed to the merits rather than the preliminary issue itself. For instance, it is

suggested that the basis of the application is more to do with the question of access or rights of way rather than ownership. Another point that was taken was that it would have been more appropriate for the Applicant to take proceedings by way of judicial review of the decision of the Land Registry to register the Respondent with possessory title rather than to accept this application.

30. A further point was taken as in this context as to the question of the public interest. This is connected with the judicial review point and the court not granting leave to apply for judicial review unless it considers that the applicant has a "sufficient interest" in the matter to which the application relates. Again, in my judgment this is a point which is not properly the subject matter of the Preliminary Issue. They can be revisited in due course.

THE DECISION

31. In such circumstances, I determine the two questions arising for consideration under the Preliminary Issue in the negative. Accordingly there will be no cancellation of the application made by the Applicant dated 27th April 2004 seeking rectification or closure of part of title number LAN 1541 pending the hearing of the application. This matter, therefore, should proceed to a full hearing.

Dated this 14th day of March 2007



BY ORDER OF THE ADJUDICATOR TO HM LAND REGISTRY



REF/2006/0084

**THE ADJUDICATOR TO HER MAJESTY'S LAND REGISTRY
LAND REGISTRATION ACT 2002**

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

Pilling Parish Council

APPLICANT

and

Stephen Wells

RESPONDENT

**Property Address: Land being the foreshore of the North side of Fluke Hall
Lane, Pilling, Lancashire
Title Number: LAN 1541**

**ORDER
ON APPLICATION FOR PERMISSION TO APPEAL**

1. The Applicants are refused permission to appeal.

REASONS

2. On 5th March 2007 I heard a preliminary issue in the above case. The issue was in the following terms - whether the referred application should be cancelled because the Applicant:

- (1) does not assert that it has an estate, right or interest adverse to, or in derogation of, the Respondent's title subsisting at the time of registration of the Respondent's title or then capable of arising; nor
 - (2) can it show that the original application dated 27th April 2005 was made in exercise of a statutory power or function.
3. The preliminary issue raised two essential features, namely (1) whether the Applicant has any *locus standi* and (2) whether the application seeking rectification or closure of the title was made pursuant to any statutory authority.
4. After hearing detailed submissions from the parties' legal representatives I came to the following conclusions:-
 - (1) that there is nothing contained in the Land Registration Act 2002, and more particularly in Schedule 4 thereto, which provides any support for the Respondent's submission that the Applicant has no *locus standi* to make the application for rectification or closure of the register. Further that in order to apply for an alteration in the register, or to object to an application being made for alteration, it is not necessary for the applicant or the objector to be asserting a claim to the title to, or a right to, or an interest in, the land in question.
 - (2) That the Applicant in its capacity as a parish council has the statutory power contained in section 222(1) of the Local Government Act 1972 to make the application on the basis that considered it expedient for the promotion or protection of the interests of the inhabitants of their area to make this application which, in its perceptions, was presumably calculated to facilitate, or was conducive or incidental to, the discharge of its functions.
5. I accordingly determined the two questions arising for consideration under the Preliminary Issue in the negative. I found that there would be no cancellation

of the application made by the Applicant dated 27th April 2004 seeking rectification or closure of part of title number LAN 1541 pending the hearing of the application. I then found that the matter should proceed to a full hearing.

6. Having had regard to the matter and in particular to the legal issues raised by way of submission at the hearing and my findings I can find no basis for granting permission to appeal which I consider to be without merit.
7. I therefore dismiss this application for permission to appeal. The matter should proceed to a full hearing.

Dated this 23rd day of April 2007

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

BY ORDER OF THE ADJUDICATOR TO HM LAND REGISTRY