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Love my neighbours – I don't plan to!

What is it about boundaries?

Perhaps the issue was summed up in a quote from GK Chesterton: "The Bible tells us to love our neighbours, and also to love our enemies; probably because generally they are the same people."

Only two years ago we posted an article about boundary cases. They have been many more since with a plethora over the last six months.

Such disputes often seem to be more bitter and expensive than many other type of property dispute, and are frequently about seemingly small bits of land. There are regularly reports describing judicial dissatisfaction about how the case got to trial, and on many occasions the remarks are aimed at the lawyers conducting the case although whether that is always fair is another matter.

Why are there still so many cases coming to court?

There is a theme to the recent cases, and probably most boundary cases – the description of the land (whether by words or illustration) is unclear in some respect.

The court's approach where the deeds are unclear

In a property transaction, the land concerned is usually described by a mix of words and illustration (i.e. plans). Here we are referring to the transaction plan, not the plan at the Land Registry.

But which takes precedence? If the description refers to the plan being "for identification only", the description prevails. If the description says the land is "more particularly delineated or described on the plan", then the plan prevails.

In *Cameron v Boggiano & another* (2012), the judge said that "there could be no confidence in the exact position on the ground of a straight line drawn on a plan that was deficient in detail and exactness in almost every other respect."

So what if the plan is useless, perhaps because it is to a small scale, carries no measurements, has slapdash colouring, or a thick red line?

The general rule is, when interpreting a written contract, the parties' intentions must be ascertained, on legal principles of interpretation, from the words they have used in the contract itself. Other evidence is “extrinsic” to that.

If the position of a property boundary line is clear from the title deeds, but the boundary line is disputed, extrinsic evidence will not be admissible and none of the presumptions relating to boundaries (for example, about hedges and ditches) can be used to contradict the title deeds, except in a claim for the correction of the transaction document.

Whether the position of boundaries is sufficiently clear to preclude the admission of extrinsic evidence will be a matter to be judged on the facts of each case.

There is an exception to the general rule summarised above. It provides that where the clause describing the land (the parcels clause) in the title deeds is not clear, or where there are a number of such clauses which conflict, extrinsic evidence may be admitted. The Court of Appeal's decision in *Pennock v Hodgson* (2010) illustrates that even where a conveyance plan seems clear, on closer examination there may be uncertainties that permit recourse to extrinsic evidence.

This exception is justified by the importance of being able to identify with certainty who owns land and what has and has not been conveyed.

Alan Wibberley Building Ltd v Insley

The opinion of Lord Hoffman in *Alan Wibberley Building Ltd v Insley* (1999) is regarded as the leading modern authority on the interpretation of parcels clauses. Lord Hoffman's judgment set out the following principles:

- The first resort in a boundary dispute is the deeds.
- The parcels clause of a conveyance or transfer may refer to an attached plan, but usually this is said to be "for the purposes of identification only". The use of such words indicates that the plan cannot be relied upon as delineating the precise boundaries.
- In any case, the scale of the plan in a conveyance or transfer is often so small, and the lines shown on it so thick, that the plan is useless for any purpose other than general identification of the land.
- It follows that, if someone has to establish an exact boundary, a conveyance or transfer will almost invariably have to be supplemented by inferences drawn from features on the ground that existed (or may be supposed to have existed) at the time that the deed was executed, or from other evidence. Oral evidence will never be admitted to contradict the contents of a deed.
- There are certain presumptions that assist the inferences that may be drawn from such topographical features. One example is the presumption relating to hedges and ditches.

In *Taylor v Lambert & Lambert* (2012), the court concluded that the judge had been faced with an inconsistency between the area measurement on one hand and the physical characteristics of the land on the other, supported by the indications given by the plan. In that situation, regard could be had to extrinsic evidence and the measurement in the transfer disregarded.

But just because a plan might be deficient in some way does not mean it is to be ignored. In *Dixon & another v Hodgson & others* (2011), the court said that even if the plan in the case could not give the whole answer, it was a very significant part of the objective facts available and it was surely right to consider what information it did reveal.

What extrinsic evidence may be admitted to construe a written contract?

Whatever extraneous evidence is produced in relation to a boundary dispute, it must always be of probative value in determining what the original parties intended. It is important in assessing probative value, to be clear what needs to be proved.

As held in *Pennock v Hodgson* (2010), it meant looking at the evidence of the actual and known physical condition of the relevant land at the date of the conveyance with the attached plan in one's hand, and interpreting the conveyance against the background of its surrounding circumstances, which included knowledge of the objective facts reasonably available to the parties at the relevant date.

Extrinsic evidence that may be admitted may include physical evidence on site, such as topographical features or information from other title deeds.

By way of example, the following may be useful as extrinsic evidence, but how compelling it is will depend on all the circumstances:

- Abstracts of title and title deeds.
- Particulars of sale at an auction, and possibly an estate agent's particulars.
- Replies to pre-contract enquiries.
- Statutory declarations.
- In relation to common land, the register of common land.
- Maps, including old tithe maps and turnpike maps.
- Photographs.
- Planning permissions.
- Verdicts in earlier boundary dispute proceedings.
- Witness statements (provided they are in the prescribed form and are submitted using the prescribed procedure).
- Physical evidence on site, such as topographical features.
- A clearer version of the transfer plan.

There is case authority that extrinsic evidence may also include conduct of the parties and the use of the property.

What should you do if you are faced with a boundary dispute?

It would be naive not to accept that disputes between neighbours arise. Inevitably, in most cases, boundary disputes concern neighbours who are living in close proximity to each other. Temperatures become raised. While it is sometimes difficult to do, one should try to remain calm, and retain a sense of perspective. By all means seek legal advice early on, but do not lose an opportunity to seek rapprochement direct. If there is a dispute that cannot swiftly be resolved, give early consideration to alternative dispute resolution processes (e.g.

mediation). Legal costs in these cases often get out of hand, not least because dealing with a boundary dispute in court requires sometimes significant investigations and preparation of evidence. Trying to avoid such costs and the impact on one's life a court case can have are good motivations for seeking compromise.

Can more disputes be avoided in the first place? Perhaps if there was more communication between neighbours, particularly before works were undertaken that are premised on the boundary being in a position not necessarily clear to the adjoining owner.

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