

Legal alert

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Mind the registration gap

Baker v Craggs [2016] EWHC 3250 (Ch)

On 17th January 2012, Michael and Maureen Charlton, the then owners of Waterside Farm, Radstock, completed the sale of part of the farm to Martin Craggs.

Unfortunately, Mr Craggs' solicitors did not register the purchase at the Land Registry until 16th May, long after the expiry of the priority period conferred by their official search of the register.

In the meantime, on 14th March, Mr and Mrs Charlton had sold certain remaining parts of the farm to Paul and Jodi Baker. Thanks to yet another conveyancing failure, the transfer to Mr and Mrs Baker included the grant of a right of way over that part of the farm that had already been sold to Mr Craggs.

Mr Craggs objected to the Bakers' exercise of the right of way, claiming that the grant was ineffective because (despite the expiry of the official search) his purchase took priority over it.

At the time of the grant of the right of way, Mr Craggs was the beneficial owner of the property (but not the legal owner, because his purchase hadn't yet been registered). Nevertheless, the court held that his beneficial ownership qualified as an overriding interest, because he had been in occupation of the property when the right of way was granted. Such an overriding interest could take priority over the right of way.

However, the court then pointed out that overriding interests can be overreached by the sale of a "legal estate" (which expression includes, said the court, the grant of a right of way). If an interest is overreached then it can't override. Mr Craggs' beneficial ownership was, indeed, overreached because the right of way had been granted by two trustees (i.e. the Charltons) to whom capital money (i.e. the purchase price of the remaining bit of the farm) had been paid.

Mr Craggs was therefore stuck with an unexpected right of way across his newly-acquired property.

The rules on overreaching are set out in the Law of Property Act 1925. They expressly state that the benefit of a contract for the sale of a legal estate (an "estate contract") cannot be overreached. But, according to the judge, that didn't help Mr Craggs. The overreaching occurred after completion of Mr Craggs' purchase, at which point the estate contract was extinguished and Mr Craggs had become beneficial owner of the property. The interest of a purchaser under an uncompleted contract for sale, observed the judge, is different to that of a beneficial owner. Under the former, the purchaser has the contractual right to have the property conveyed to it, but may never in fact get it. Under the latter, the seller holds the property on a bare trust for the benefit of the buyer (and therefore the beneficial ownership is absolute).

Notwithstanding the court's unusual application of the doctrine of overreaching, the most surprising aspect of this case is that neither side queried the validity of the right of way granted by the Charltons after the burdened land had already been sold. Both sides appear to have accepted this as yet another unassailable consequence of the "registration gap" between the date of completion of a sale and the date on which the buyer is actually registered as the new owner at the Land Registry. Until the buyer has been registered, the seller retains all the powers of a legal owner, including the power to grant easements over the land.

Presumably, Mr Craggs will be making a claim for compensation against Mr and Mrs Charlton for granting the easement in breach of contract (or in breach of trust). No doubt, he will also make a claim against his solicitors for failing to comply with the priority period deadline.