



PUMP COURT

CHAMBERS

**Adverse possession and boundary disputes following *Brown v Ridley*
and *White v Alder***

Adam Gadd



Adverse Possession and Boundaries

Brown v Ridley [2025] UKSC 7

- When does the period of ten years over which an applicant for registration on the basis of adverse possession must hold the reasonable belief that they were the owner of that land run until?

White v Alder [2025] EWCA Civ 392

- Whether as a result of the very nature of a boundary demarcation agreement, a successor in title was bound by it even if they had no knowledge of it?

Brown v Ridley

- Mr Brown (R) was the registered owner of land in County Durham, which he purchased in September 2002 (“the Brown land”). Mr and Mrs Ridley (the appellants) are the registered owners of a neighbouring plot of land, which they purchased in July 2004 (“Valley View”).
- A previous owner of Valley View had put up a fence and planted a hedge along what he understood to be the boundary between the Brown land and Valley View, but which (as the parties agreed) actually enclosed part of the Brown land as registered (this strip of land being the “disputed land”).
- The Ridleys used the disputed land first as part of their garden and later as part of the site for the erection of a new house (into which they eventually moved). Planning permission for the new house was granted in early 2018. The fence and hedge were removed later that same year in preparation for the necessary construction work.

Brown v Ridley



Brown v Ridley

- In October 2019, Mr Brown gave notice to the Ridleys that he considered the construction work to be in breach of the Party Wall etc. Act 1996. In December 2019, the Ridleys applied to the Land Registry to be registered as the owners of the disputed land on the grounds that they had been in adverse possession of it for the requisite period of time per the Land Registration Act 2002. Mr Brown objected to their application.
- The Land Registry referred the matter to the First-Tier Tribunal, which sided with the Ridleys. Mr Brown appealed, and won in the Upper Tribunal. The Ridleys appealed to the Supreme Court.

Leapfrog Appeal

- Issue was one of construction of paragraph 5(4)(c) of Schedule 6 of the Land Registration Act 2002;
- CA in *Zarb v Parry* [2011] EWCA Civ 1306 the Court of Appeal assumed, albeit without argument on the point, that one construction (A) was correct
- whereas, in the present case, both the First-tier Tribunal (“the FtT”) and the Upper Tribunal (“the UT”) considered that another construction (B) was correct.
- The result was that, in the opinion of the UT (Edwin Johnson J, President of the Lands Chamber) a full argument of the merits of the two constructions before the Court of Appeal might be futile, because of the risk of another conclusion that the Court of Appeal was itself bound by *Zarb*, regardless of the merits, hence the leapfrogging to the SC

Brown v Ridley

- Adverse possession: A person (“S”) may, by making an application to HM Land Registry, seek to be registered as the proprietor of registered land on the basis of ten years’ adverse possession ending on the date of the application.
- If S’s application is opposed by the existing registered owner (“O”), then S may only obtain registration as owner if S can satisfy one of three conditions, specified in paragraph 5 of Schedule 6.

Brown v Ridley

- The third of those conditions specified in paragraph 5(4) of Schedule 6 includes at (c):
- *(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*

- This gave rise to two alternate constructions:
- Construction A:

Under construction A, the period of reasonable belief must be a period of at least ten years ending on the date of the application.

- Construction B:

Under the more lenient construction B, the period of reasonable belief can be any period of at least ten years within the potentially longer period of adverse possession which ends on the date of the application.

- Put another way, a period between the ending of a ten year period of reasonable belief and the date of the application will be fatal to the ability of S to satisfy the boundary condition under construction A, whereas it will not be fatal under construction B.

Brown v Ridley

- By no means an unusual or unlikely situation; routine, or even typical.
- This is because the impetus which may lead S to seek to be registered as the owner of adjacent land which S formerly thought was already his will often be the raising by his neighbour O of a dispute as to his ownership, backed up by evidence in support, which makes S's continuing belief unreasonable.
- But it is virtually inconceivable that S could then prepare and make such an application on the very same day as O first articulated his claim (ie if Construction A correct).



Brown v Ridley

- The Ridleys reasonably believed that they were the owners of the disputed land from 2004 until about February 2018, when the process of obtaining planning permission for the erection of their new house revealed evidence which meant that such a belief could no longer reasonably have been held by them.
- There was thus a gap of about 21 months between the ending of their 14 year period of reasonable belief and the date of the making of their application.

Lord Briggs gave the judgment of the court:

1. Boundaries were an aspect of the definition of land ownership where the position on the ground could prevail over the line drawn on a plan, and where a long-continued status quo between neighbouring owners might be thought to deserve respect, bearing in mind the potential for disputes about boundaries to generate disproportionate cost, effort, dismay and hatred if litigated.

There was therefore little force in the submission that the reasonable belief condition had to be narrowly construed



Brown v Ridley

2. Construction A served no real purpose beyond construction B other than an almost mechanical reduction of the avenue constituted by the boundary condition to one which was little more than illusory. Both constructions effectively excluded squatters who were seeking to possess land with a view to taking it from others through what they knew was a trespass.

Brown v Ridley

An application for registration of title to adjacent land along an undefined boundary could not be done quickly. R's contention that it was an underlying purpose of this part of the Act that applications should be made promptly, if reliance was to be placed on adverse possession under the boundary condition, was rejected.

Brown v Ridley

The structure of the adverse possession part of the Act expressly left the applicant free to choose between applying for registration or waiting to see if they were evicted, or waiting to see whether their neighbour sued them for possession.

Those were real choices to make, which Parliament must be assumed to have deliberately made available for good reason. The essential debate came down to the question whether construction A could be saved from its propensity to make the use of the boundary condition illusory, by the vigorous application of the de minimis principle.

Brown v Ridley

However, R's submission that the principle could justify reading into construction A an additional month or two for the making of the application after the loss of reasonable belief suffered from insuperable obstacles.

3. Consideration of the words Parliament had chosen tended to support construction B.

Even if there were not the other strong factors favouring construction B as referred to above, based on the need to avoid a construction which made the statutory right illusory, para.5(4)(c) should be construed in accordance with construction B on the ordinary meaning of the words.

Boundary Disputes

White v Adler

- Appeal concerned with whether a boundary agreement binds successors in title and whether, if it is capable of doing so, it only binds them if they have knowledge of the agreement.



Boundary Disputes



Mrs White stands outside her house Willow Cottage in Chelmsford, Essex, which she says she will have to sell after a costly court battle. The Old Stores cottage is to the left

Boundary Disputes

White v Adler

- On or about 18 October 2005 and no later than 22 October 2005, Mr White's predecessors in title, the Hobsons, and the Alders' predecessors in title, the Joneses, had orally agreed the location of the boundary between their respective properties.
- They also agreed that The Old Stores' owner owned the physical boundary features.
- The agreement was later recorded in writing in the form of some text and a plan (the "Boundary Agreement").



Boundary Disputes

White v Adler

- In a judgment handed down on 29 July 2022, the district judge found that the Hobsons and the Joneses had reached the Boundary Agreement before the sale of Willow Cottage and The Old Stores to Mr White and the Alders respectively; the Boundary Agreement was an agreement to clarify an uncertain boundary and not a contract to convey land; and the Boundary Agreement bound Mr White and the Alders as successors in title. The district judge came to this latter conclusion having considered Neilson v Poole (1969) 20 P&CR 909, Joyce v Rigolli [2004] All ER (D) 203 (Feb), Haycocks & Anr v Neville & Anr [2007] EWCA Civ 78 and Gibson v New [2021] EWHC 1811 (QB).
- Appeal to the Circuit Judge was dismissed

Boundary Disputes

White v Adler

Permission to appeal to CA granted on two grounds:

- That the judge was wrong not to apply *Gibson v New* to the effect that boundary agreements are not binding on successors in title; and
- The judge was wrong not to apply *Gibson v New* in the circumstances in which Mr White did not have any knowledge of the boundary agreement prior to acquiring Willow Cottage.

Boundary Disputes

White v Adler

CA found:

Gibson v New - The conclusions in Gibson in relation to whether a boundary agreement bound successors in title, were obiter dicta. The parties to the proceedings were the original parties to the agreement and the issue in the proceedings was whether they were bound by their own agreement. The real question for the judge was whether it had been wrong to grant declaratory relief and it was in that context that the judge observed that "the declaration simply establishes the contractual position as between the parties, ... it has no proprietary effect between third parties." The judge was concerned with the effect of the declaration and not with boundary agreements in general. It followed that the district judge and the judge in the instant case were correct to decide that Gibson did not change matters and to follow Neilson (see paras 51-52 of judgment).

Boundary Disputes

White v Adler

CA found:

Boundary agreements: binding on successors in title? A boundary demarcation agreement bound the parties to it for the reasons explained in *Nata Lee Ltd v Abid* [2014] EWCA Civ 1652, [2015] 2 P. & C.R. 3, [2014] 12 WLUK 631.

The consideration for the agreement was the substitution of certainty for uncertainty and the avoidance of the risk of future disputes. Although in many cases the parties would act upon the agreement, for example, by building a wall or erecting a fence, there was no need for anything more in order to render it binding as between them. Such an agreement had proprietary effect and, as a result, also bound successors in title.

As no one was able to transfer or convey more than they owned, such an agreement effectively "binds" successors in title whether or not they had knowledge of it. It did so because it defined what they purchased; it established on the ground the physical extent of the respective legal estates created by the conveyance or transfer.

Boundary Disputes

White v Adler

CA found:

In the case of unregistered land, a vendor could not convey to a purchaser more land than he owned. In the case of registered land, upon registration the purchaser was deemed to be the proprietor of the registered estate under the Land Registration Act 2002 s.58. In either case, if the extent of the land owned by the vendor had been conclusively established by a boundary demarcation agreement, the purchaser could not acquire title to more land than was owned by the vendor. If the effect of a boundary agreement was to define the extent of the parcels of land owned by the parties to it, it must logically continue to define the extent of those parcels when they were transferred to a successor in title.

Boundary Disputes

White v Adler

CA found:

Although a boundary demarcation agreement which was **implied** might be more difficult to prove than an express agreement, **there was nothing to suggest that the underlying principle should be different.** In just the same way, the agreement defined the parcel of land and as a result, defined what was transferred to a successor in title.

That was consistent with the decisions in *Burns v Morton* [2000] 1 W.L.R. 347, [1999] 5 WLUK 428 and *Stephenson v Johnson* [2000] E.G. 92 (C.S.), [2000] 7 WLUK 308 where the boundary agreement which bound successors in title was implied from the conduct of predecessors.

Boundary Disputes

White v Adler

CA found:

None of the authorities, including those concerned with successors in title, turned upon whether the person seeking to avoid the effect of the boundary agreement had notice or knowledge of it. That was not surprising. A boundary demarcation agreement was neither an equitable interest for the purposes of unregistered conveyancing nor an overriding interest for the purposes of registered land. It clarified the border or boundary between the properties shown in the conveyance or transfer. It therefore did not turn on knowledge. That conclusion was consistent with the public policy identified in Neilson.

It was an act of peace which should be encouraged.

It avoided uncertainty and the risk of litigation.

It did not undermine the formalities for the transfer of land because its purpose was not to effect such a transfer. As pointed out in *Joyce v Rigolli* [2004] EWCA Civ 79, (2004) 148 S.J.L.B. 234, [2004] 2 WLUK 315, where trivial amounts of land were transferred, it avoided the disproportionate expense of a survey and avoided the preparation and execution of a written contract.

Boundary Disputes

White v Adler

CA found:

Accordingly, public policy favoured the binding nature of boundary demarcation agreements. Furthermore, as a result of the very nature of a boundary demarcation agreement, a successor in title was bound by it even if they had no knowledge of it (paras 53-60).

The need for knowledge - The question of whether knowledge was a necessary component to enable a boundary demarcation agreement to have effect as against successors in title was inherent in the question of whether it had effect as against successors in title. It was not necessary, therefore, to consider whether the court had jurisdiction to hear the second ground of appeal, nor whether it should exercise its discretion to do so (paras 61-65).

Boundary Disputes



Mr and Mrs White's wedding photo. They have married each other twice; this photo shows their second wedding