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NAK Newsletter

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IN THIS ISSUE, we'll look at:

- 1. Adverse Possession (of land) – When what you thought belonged to you just might not be the case after all! ;**
- 2. Legislative Link : Teenage Violence**



A MAN'S HOME IS HIS CASTLE -- ALMOST

1. A man's home is his castle. Or so the saying goes. But a landowner found his home threatened when a piece of land adjoining his was taken over by a developer. Not only was his peace and quiet broken – but hammer piles, bulldozers, cranes and construction workmen became his neighbours for the next 2 years. To add insult to injury, the landowner soon received a notice from the developer's lawyers demanding that he remove a wall and fence alleged to be encroaching by a few inches into the adjoining land.
2. Now this was surprising. The landowner swore that the wall and fence had been there since the time he bought the house and land in the 1960's and he had not shifted the wall and fence since then. The first question was how the wall and fence could have encroached into the adjoining land. This was a curious state of affair which might theoretically, have arisen from the legal definition and procedures for defining land boundaries coupled with the passage of time. But this legal quandary may have to be examined in another article.
3. A second curious feature was the encroachment of a mere few inches. One might have thought that it was not a big deal to move a wall or fence a few inches. But the landowner found to his horror that his encroaching wall was part of the structure supporting the roof and floor slabs of his terrace house. To move his wall a few inches, he might have to literally re-build his entire house.

4. On advice, the landowner made a claim on the few inches of land by adverse possession. To protect his interest, he lodged a caveat against the adjoining few inches of land. The developer was incensed. His lawyer's demand had backfired on him.
5. The legal position of the parties would have been simple but for the fact that the Land Titles Act and the Limitation Act had both been amended to remove the right of adverse possession. Parliament was kind enough to include a transitional provision which entitled landowners whose interests were protected by a caveat to apply for possessory title during a window period of 6 months. The procedure for doing so would require the appointment of a registered surveyor and lawyers.
6. However the landowner did not wish to incur the cost and inconvenience of applying for possessory title. After the lapse of the window period of 6 months the adjoining developer's lawyers returned to file a statutory declaration requiring the removal of the caveat. The Land Registry threatened to cancel the caveat
7. Faced with this challenge, the landowner applied to Court for a declaration of his interest by way of adverse possession. This was resisted by the developer's lawyers on the ground that the law has been changed and the landowner had failed to take advantage of the 6 month window period to apply for a possessory title.
8. After lengthy arguments the Court agreed with us that the title in adverse possession had crystallized prior to the registration of the land and was protected by the caveat. Having lost the fight the adjoining developer had to subdivide his land to transfer the few inches thereof to the landowner. The landowner was overjoyed. Not only did he keep his roof over his head – he obtained legal title to the few inches of land without having to apply for possessory title.
9. The moral of the story for developers is this – let sleeping dogs lie. In closing it might be worthwhile to look at the Minister for Law's speech when Parliament amended the Limitation Act to remove the claim by adverse possession :

"I also wish to stress that the amendment is not retrospective. It will not affect those in possession who have already acquired their title by adverse possession prior to the amendment coming into force. Nor will such persons in possession be required to apply within a time-frame to the court for an order as to their title to the land."
10. The Minister's speech might be comforting to landowners. But the Minister also added some conditions which have to be met before landowner's possessory interest are protected. Landowners will do well to seek lawyer's advice early if they suspect the boundaries of their home are not as safe and secure as a castle.

LEGISLATIVE LINK

Teenage Violence :

While the Bills before Parliament relate to corporate governance and other technical matters, Parliamentary Debate focussed more on the social issue and public debate generated by newspaper reports on a group of teenager who confined and tortured a teenage girl for over a week.

A Member of Parliament raised questions based on :

- 1) A 1998 Statistical Research Report prepared by the Subordinate Courts showed an increase in the number of juveniles sentenced for rioting and 70% of the rioters came from structurally complete homes. Instead they had poor parental guidance. More pertinent was that more young girls were taking part in rioting than before. And more parents were applying to Court for help to control their wayward children.
- 2) A more recent Nanyang Technology University thesis suggesting that fathers play an important role in the disciplinary development of children. Children with absent fathers tend to have more disciplinary problems. Statistically, absent mothers and separation of parents per se, did not have the same impact on the children's discipline.

These reports raise the possibility that parental guidance and in particular paternal guidance (rather than intact families) is more critical to the discipline of children. While society recognises the role of mothers in the emotional development of children, the importance of the role of fathers in the disciplinary development of children has not been widely appreciated in modern society.

In the United Kingdom, concerned fathers banded together as a charitable organisation called "Families Need Fathers" to seek recognition for the importance of fathers in the lives of their children. They canvassed not for mere moral and social support for the role of fathers. They fought for life issues such as custody, access and visitation rights to children in divorce proceedings and changes to divorce laws and the way such laws were administered by Court officers and welfare officers.

In particular the UK Government's survey found that 40% of divorced mothers admitted to thwarting their children's contact with their fathers and 40% of fathers eventually lost all contact with their children. The association concluded that there was insufficient safeguard against mothers doing so to the detriment of their children.

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