

Boundart Disputes - Use of Court, A Last Resort

Litigation over disputed boundaries can be complex and expensive. Simon Barker QC sitting as a High Court Judge recently stated "but a person remains entitled in law to protect and preserve that which is his or hers". The Judge helpfully summarised the principles which apply in determination of boundary disputes:

- For registered land, the file plans usually show only general boundaries and not the exact line of the boundaries.
- Ordnance Survey plans are usually no more than a general guide to boundary features and should not be scaled up to delineate an exact boundary.
- The starting point is the language of the conveyance, aided by the conveyance plan, or guided by the plan if it is stated as being definitive.
- If the conveyance does not bring clarity, recourse may be had to extrinsic evidence, such as features which existed at the time of the conveyance.
- Admissible extrinsic evidence may include evidence of subsequent conduct if this is probative of what the parties intended.
- Evidence of features post-dating the conveyance may or may not be relevant.
- It is important to bring certainty to the boundary, rather than leaving it 'fuzzy at the edges'.
- Where a boundary line can be determined by reference to a conveyance, other evidence may establish a different boundary as a result of adverse possession.
- An informal boundary agreement need not be in writing, because it demarcates an unclear boundary rather than transferring an interest in land.
- Boundary agreements are usually oral, but can be inferred or implied.
- The court must also have regard to what a reasonable layman would think he was buying.

In practice, this means any consideration of a disputed boundary will be a multi-layered exercise. The court will start by considering the conveyance pursuant to which the boundary was created. Any plan attached to the conveyance will be of particular significance if the property is said to be 'more particularly described in the plan'. If the position of the boundaries can be clearly established from the conveyance, no further evidence can be considered on the issue unless there is a claim for rectification of the conveyance.

If the position cannot be clearly established, the court will move on to look at the extrinsic evidence, including the subsequent conduct of the parties. That may require a very detailed analysis of documents, plans, photographs

(including aerial photographs), expert surveying and cartographic evidence and witness evidence.

All of this shows why litigation over disputed boundaries can be so complex and expensive, often (in the words of Judge Barker QC) 'economic madness'. It is one of the areas where emotions (as well as costs) run particularly high. Given the uncertainty involved in most disputes of this type, ALTERNATIVE DISPUTE RESOLUTION should be of great attraction. If settlement is not possible, the parties should be ready to deal with the issues stated above.

Following legal advice, the appointment of a specialist mediator/arbitrator would be the most cost effective and speedy way forward to resolve the matter.

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