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ECHR Judgment on the Doctrine of Adverse Possession

Adverse possession (or squatters rights) is a concept frequently relied upon by parties in relation to lands they have occupied continuously and exclusively for over 12 years without interference, but which they either know or subsequently realise that they do not have title to. This scenario can arise where small parts of a property outside of the boundary have been used continuously and exclusively for over 12 years without a third party ever having a difficulty with that occupation. It can also arise in respect of a piece of land occupied entirely independently of any other property in the vicinity. In some circumstances, applications are made by those parties to the Land Registry to be registered as owners (with possessory title) of the lands which have been occupied.

This decision of the European Court of Human Rights has been pending for a number of years and the Irish Land Registry were keen to see what decision the ECHR would ultimately make as they process all applications for registration of squatters rights relating to registered land. The August 2007 decision should now hopefully ease the path of the registration of some of those applications, particularly where they are uncontested.

On 30th August 2007, the Grand Chamber of the European Court of Human Rights ("ECHR") delivered its Judgment in the case of *J.A. Pye (Oxford Limited) and J.A. Pye (Oxford) Land Limited v The United Kingdom*. The case had been the subject of 8 years of litigation. The end result is that the European Court of Human Rights have finally **confirmed the position of the Doctrine of Adverse Possession in Irish Law** as well as its compatibility with Article 1, Protocol 1 of the ECHR. This securing of the doctrine is clear as against registered land, but little clarity has been obtained in respect of on unregistered lands.

The case arose out of a claim of adverse possession of a substantial amount of land in England. The claim related to certain grazing arrangements which had been in place, and which had expired, but possession had continued on. Article 1, Protocol 1 of the European Convention on Human Rights entitles every person to peaceful enjoyment of its lands. However, it allows the State an entitlement to enforce its laws, as it deems necessary, to control the use of property in accordance with the general interest. In this particular case (1) the ECHR were satisfied that Britain were, by way of the Doctrine of Adverse Possession, controlling the use of property. It then needed to be considered by the ECHR, (2) whether the Doctrine pursued a legitimate aim in the general interest or not.

This memorandum is a general summary of developments and is not a complete statement of the law. Specific legal advice should be obtained before taking action.

In considering that second point, the ECHR firstly considered whether (1) limitation periods pursued that legitimate aim, and secondly, considered whether (2) allowing for the extinguishment of an owners title after a certain period had expired, was in furtherance of that aim. The first consideration had previously been dealt with by the ECHR and therefore the 12 year limitation period was upheld as pursuing a legitimate aim.

On the second point, the ECHR determined that there was a general interest in determining a limitation period and allowing for the extinguishment of title after that particular period had passed. The ECHR went on to consider whether an even balance had been struck between the general interest and the interests of the individuals concerned.

This decision of 30th August 2007 secures the position of the doctrine of adverse possession in Irish Law in relation to registered land. The general view is that the Judgment is likely to also have a positive impact on the position of the Doctrine in relation to unregistered land as the

policy reasons submitted by the Irish Government in the case are stronger in relation to unregistered land. Historically, a substantial amount of the lands in Ireland are unregistered land. The aim of the Doctrine is to reduce uncertainty about the ownership of land. The Irish Government's view therefore was that it was not unreasonable to place a duty on owners of land to take steps to maintain possession of their own lands and the ECHR would appear to agree with it.

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