

A question of ownership

Lucy Barber reviews a recent case where the court was required to consider whether the owners of houseboats held as tenants or as licensees?



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In the normal course of property transactions, when buyers purchase a freehold the buyer will assume, quite rightly, that they are also purchasing the ground upon which the house is situated. It is a long-established principle that when you buy the freehold of a property, you own the ground beneath it and the airspace unless these areas are expressly excluded.

This assumption may be misguided if applied where you have a licence for a plot of land and you build or place a home upon that parcel of land. The question is whether the house has become sufficiently annexed to the land and has become an integral part of it, so that, consequently, the licence attaches to the house.

If the answer to this question is yes, then you may have acquired statutory rights of tenure of the plot of land where none previously existed. If the answer is no then on what basis do you own the house? What happens to your home if the licence is lawfully terminated? These questions have recently been considered in the Court of Appeal decision of *Christopher Mew and Janet Trust v Trismire Ltd* [2011].

The facts

This case involved two houseboats known as 'Emily' and 'Watershed' located in Bembridge Harbour in the Isle of Wight. Emily and Watershed are located on two plots known as plots 14 and 30 Embankment Road. The plots are rectangular and are adjacent to the harbour and to Embankment Road. Emily and Watershed sit on a wooden platform that, in turn, sits on wooden piles embedded in the sea harbour.

The freehold of the harbour is owned by Bembridge Harbour Improvements

Company Ltd (BH) who came to own the freehold by way of a transfer that was made pursuant to the Pier and Harbour Order (Bembridge Harbour) Confirmation Act 1963. The Act allowed BH to continue to operate the harbour, subject to the rights and obligations affecting it. The transfer of the harbour granted to them all the rights of access to jetties and landing places that existed at that time. In addition, the Act allowed BH to, 'provide, place, lay down, maintain, use and have... conveniences to vessels and house boats on land owned or leased by the owner' in return for a maintenance charge paid by the owners of any houseboats which made use of these services.

A houseboat is defined by the Act as:

Any vessel lying in the water or on the foreshore of the harbour which is used or capable of being used as a place of habitation and if so used whether such use is temporary, intermittent or permanent.

BH granted a long lease of the plots of land on which Emily and Watershed and various other houseboats were situated, to Maritime & Leisure Investments Ltd (ML). ML then sold the plots upon which Emily and Watershed are situated at an auction. Trismire Ltd (TM) purchased these two plots and was granted sub-leases of the plots for a term of 99 years. The special conditions of sale referred to oral licenses being granted to the owners of Emily and Watershed that the purchase of the plots was subject to. BH had previously offered the houseboat owners the opportunity to acquire a long lease in respect of their plot but Mr Mew, the owner of Emily, and Ms Just, the owner of Watershed, declined.

'What happens to your home if the licence is lawfully terminated? These questions have recently been considered in the Court of Appeal decision of *Christopher Mew and Janet Trust v Trismire Ltd* [2011].'

Annexation or removable chattels?

It was said that the question of 'annexation so as to become part of the realty is a question both of intention and degree'. In deciding whether the houseboats had become annexed to the plots of land, previous authorities were considered and referred to, including the following cases:

- The House of Lords' decision in *Elitestone Ltd v Morris* [1997];
- *Webb v Frank Bevis Ltd* [1940];
- *Deen v Andrews* [1986];
- *Chelsea Yacht & Boat Company Ltd v Pope* [2000].

Elitestone

In *Elitestone*, the issue was whether a bungalow had become annexed to the land upon which it was resting and of which the owner had a licence. The licensee constructed a bungalow on the land. It had a wooden floor that was suspended on some concrete pillars that were, in turn, attached to the ground. The bungalow itself, however, was not affixed to the pillars but was held in place by gravity (ie it was purely the weight of the bungalow which held it to the wooden floor). The owners of the bungalow claimed they had a protected tenancy under the Rent Act 1977. In order to succeed with such a claim they had to show that the bungalow had become part of the land, so that the licensee had become a tenant of the bungalow and, as such, had security of tenure. The issue of annexation was discussed in detail.

In deciding the issue of annexation, it was held that there were three considerations:

- 1) Had the bungalow been physically annexed to the land?
- 2) What was the purpose of the bungalow being placed on the land? Eg is the object 'designed for the use or enjoyment of the land or for the more complete or convenient use or enjoyment of the thing itself'.
- 3) Common sense.

In relation to the first question, it was held that the bungalow was not annexed to the land because:

- (a) the foundations were separate from the bungalow, the bungalow simply sat on the concrete blocks, it was not fixed to them;
- (b) the bungalow was not built into the ground.

In relation to the second question it was held that:

- (a) the bungalow was constructed upon the land so that the surrounding rural area could be enjoyed;
- (b) the 'integrity' of the bungalow relied upon the fact that it would remain *in situ* and it was therefore clear it was intended to serve a permanent purpose;
- (c) the bungalow was constructed for the purpose of providing a permanent residence; and
- (d) the bungalow had been constructed in such a way so as that it could not be taken down and reconstructed in another location; if it had been built that way then it would arguably have been a chattel.

In relation to the issue of common sense, it was held that it was a matter of common sense that if the bungalow was built so that it could not be removed in any way except by demolishing it, there could be no intention that the bungalow would be a chattel. The intention must instead have been that the bungalow formed part of the land.

It was therefore held that, notwithstanding that the bungalow was not physically annexed to the land, that the 'element of permanence' meant that it had been annexed to the land. It was not meant to be enjoyed as a chattel and therefore the licensee had become a tenant of the bungalow.

This case distinguished *Webb* which involved a shed built on a concrete floor and was attached by iron straps, and *Deen* which involved a demountable greenhouse where, in both cases, they were deemed to be chattels as they could be removed and were not annexed land on which they had been erected.

Chelsea – no sense of permanence

This was a Court of Appeal decision relating to a houseboat that was moored to a pontoon on the Thames. It was still situated in the water and therefore could be towed and relocated at any time. It was only attached to the riverbank by ropes and mains services. These attachments could be removed.

The court did not agree with the tenant's argument that the purpose of the attachment of the houseboat to the riverbank was to provide a permanent home. The court held that there was no degree of permanence on which the tenant was able to rely and it was not necessary to attach the houseboat to land to enable it to be used as a home. The attachments simply stopped it being moved by the tide and allowed services to be provided to it. As in *Elitestone*, the court referred to the fact that this conclusion was supported by common sense:

... it is common sense that a house built on land is part of the land... So too is this common sense that a boat on a river is not part of the land. A boat, all be it one used as a home, is not of the same genus as real property.

There was, therefore, no assured tenancy of that houseboat.

The owners of the houseboats did not take assignments of leases or tenancies of the plots themselves when they purchased them.

Emily and Watershed were built locally as landing craft during the Second World War. They were never used and were instead converted to houseboats with modifications so as to make them watertight and fit for occupation.

There was no evidence available as to whether or not Emily and Watershed were always located on the platforms or whether they

onto the platforms but to remove them from the water would have required the use of a crane.

The hulls of both houseboats however, were in a state of disrepair so that if the houseboats were ever removed from their platforms it was considered that this could result in extensive damage or destruction. In addition, Emily had an extension constructed that was affixed to the harbour bed itself, as well as to the houseboat. Any removal of Emily would, in this case, result in significant damage by separating it from the

easily be disconnected from these services.

The owners of Watershed and Emily bought the houseboats *in situ* and what they purchased was the houseboats themselves as opposed to the land on which they sat. The owners of the houseboats paid the harbour fees for their respective moorings and used the houseboats as their permanent residences, paying council tax and rates in the usual way.

In July 2007 TM served notices upon Mr Mew and Ms Just terminating their licenses of plots 14 and 30 respectively. The defendants argued, however, that they occupied the plots as tenants not as licensees and that as the houseboats were their dwelling houses they had protection pursuant to the Housing Act 1988, and, as such, they were assured tenants.

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originally had floating moorings. It was not known how or at what point the houseboats were raised

extension. The houseboats were connected to main services such as water, electricity and gas but could

Were the houseboat owners assured tenants?

To be assured tenancies the houseboats and the wooden platforms upon which they sit had to be deemed to be annexed to the licensed land. If that was the case, then the notices to quit would be of no effect. If, however, the houseboats were considered to be chattels, which could be removed, then no assured tenancy existed and the licencees would have to vacate the plots upon the expiry of the notices to quit.

Were Watershed and Emily annexed to the land?

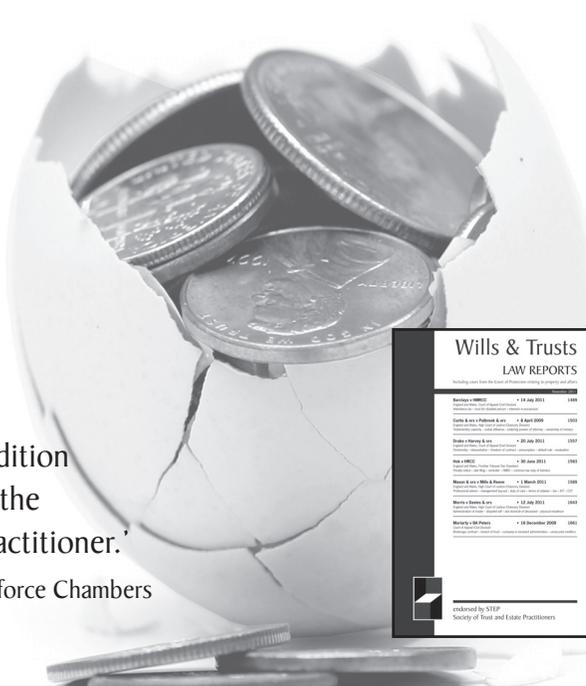
Bearing in mind previous authority (see box on previous page), it was argued by the owners of Emily and Watershed that, like the bungalow in *Elitestone*, Emily and Watershed were not affixed to the platforms on which they sat but their placement was as such to give them a 'degree of permanence' so that they formed part of the platforms. They could not be removed without considerable damage being caused and had become permanent structures that are not intended to be removed.

In considering whether the houseboats were removable chattels or whether they had become annexed to the land, it was not, however, considered material that Emily and Watershed could not be removed

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from the platform without substantial damage being caused. For the purposes of this question it was assumed that they were currently in the same state of repair and condition as they were when they were placed onto the supporting structures. As there was no evidence to the contrary, it was assumed that when they were moved onto the platform they were in a reasonable state of repair and condition and therefore it was to be assumed that they were currently in the same reasonable state of repair and condition. This meant also that the extension being carried out to Emily was deemed irrelevant for this issue, as it was an alteration made after Emily had been placed on the platform.

The court at first instance held that Emily and Watershed remained chattels. They gave the following reasons:

- The houseboats were originally chattels that were brought to the site fully constructed. They were not constructed on the site by materials having been brought to the site. The conversion of the houseboats to residential properties did not change the fact that they were chattels. It was likely that they were, at some point, houseboats used as such on the water and they relied on the authority of *Chelsea* that they therefore remained a chattel.
- They were placed on the supporting structures originally by, it was assumed, a crane and it was therefore assumed that they could have been just as easily removed in the same manner at that time. This case distinguished *Elitestone* in that the bungalow was not one removable unit which could be constructed elsewhere, whereas the houseboats were made up of one piece that could be moved and placed elsewhere and therefore they were not 'essentially different from a mobile home' and remained chattels.
- The houseboats were not affixed to the supporting structures; they could have been fixed quite easily but were not. This

supported the conclusion that they were removable chattels.

- Common sense. The houseboats could not be considered to be 'houses' within the normal use of that term. They were boats that had been adapted for the use as residences. They were removable in their entirety, had been placed on a support and it could not have been intended that they were to form part of the realty.
- With regard to the 'purpose test' ie in considering the purpose of the annexation of the houseboats,

the houseboats themselves but only attached to the plots and supporting platforms. The fact that BC continued to provide facilities for the location of the houseboats for rent did not mean that the licences had been converted into tenancies of dwelling houses. Also if it was the case that the houseboats became a part of the platforms then the owners of the house boats would not have been able to remove them or sell all as removable chattels which was the way that the houseboats had previously changed hands. There were no separate assignments of any tenancy when the houseboats were purchased. The

The purpose of the annexation in Elitestone was that the bungalow became part of the land, it was considered that the same could not be said about the houseboats disregarding the state of repair they may be in.

it distinguished *Elitestone* in that, unlike the bungalow which was built so that the occupiers could use and enjoy the surrounding land and rural environment, the houseboats could not have been said to have been placed on the structures for the use and enjoyment of the harbour bed. The purpose of raising the houseboat on to the harbour above water level was considered to be for their more convenient use and enjoyment as chattels.

In the Court of Appeal

The Court of Appeal agreed with the decision at first instance and dismissed the appeal. They distinguished this case from *Elitestone* by saying that the bungalow had all the features of a house and no characteristic that made it removable, 'by its very nature it is intended to be a permanent feature of the site'; the house was not transportable as a single unit. The purpose of the annexation in *Elitestone* was that the bungalow became part of the land, it was considered that the same could not be said about the houseboats disregarding the state of repair they may be in.

It was also held, therefore, that the licenses on the plots did not extend to

houseboat owners were therefore not assured tenants.

Conclusion

While it is not clear from the judgment what the owners of Watershed and Emily actually understood their rights to be, it is unlikely that when the owners purchased their respective houseboats that they envisaged ever having to relocate them somewhere else. When people purchase property they generally assume that they have permanent rights to their land but they need to look carefully at all the circumstances and ensure that they do everything they need to do to ensure that their position is protected and, if there is any uncertainty, to obtain legal advice. ■

Chelsea Yacht & Boat Company v Pope
[2000] EWCA Civ 425

Christopher Mew and Janet Trust v Tristmire Ltd
[2011] EWCA Civ 912

Deen v Andrews
[1986] 1 EGLR 262

Elitestone Ltd v Morris
[1997] UKHL 15

Webb v Frank Bevis Ltd
[1940] 1 All ER 247