



Defining the boundaries

Rectification of Land Registry folio denied in the absence of evidence of error

Section 32 of the Registration of Title Act 1964 (the “**1964 Act**”) allows for rectification of errors originating in the Land Registry upon registration of ownership of land. Rectification can be effected by consent of the parties, by the Property Registration Authority (PRA) on certain conditions, and by the court.

The recent judgment in the Court of Appeal case of *Lagan Bitumen Ltd v Tullagower Quarries Limited*¹ provided a useful summary of Section 32 of the 1964 Act and the rectification of errors in registration.

Background

The defendant executed a contract in 2003 (the “**2003 contract**”) for the sale of 11.185 acres of land in County Clare to Whelan’s Limestone Quarries Limited (WLQ). By Deed of Transfer in 2004 (the “**2004 transfer**”) the defendant transferred the land the subject of the 2003 contract to WLQ (the “**lands**”).

In 2011 a statutory receiver was appointed, by the lending bank, over certain assets of WLQ, including the lands. Subsequently Lagan Bitumen Limited (LBL) purchased the lands from the receiver in 2016. LBL took over existing proceedings already commenced by the receiver, wherein the defendant had maintained, inter alia, that there was an error in the extent of the lands transferred, and refused access to the receiver and subsequently LBL. The proceedings were commenced with the receiver seeking a right of way in favour of WLQ and an injunction preventing the defendant from obstructing the receiver’s access.

The new Folio opened after the 2004 transfer to WLQ contained 12.726 acres of land. The defendant alleged (in the defence of the claim) that the 2004 transfer and the registration by the PRA were in error and not in accordance with the 2003 contract. The defendant argued that correspondence and the maps exchanged between the PRA and the Solicitors for the lender Bank were incorrect. The defendant counterclaimed for rectification of the 2004 transfer to reflect what WLQ said it had agreed to take (ie less land than described in the 2004 transfer). At the hearing in the High Court and on appeal, the case was confined to the rectification issue.

In the case, the defendant argued that it was not until 2012 when the receiver attempted to enter the lands that it learned of the error. The High Court described the defendant’s delay of thirteen years in seeking rectification as “*an extraordinary tale of alleged lack of attention to detail*” by the defendant.

1. [2019] IECA 89. Eversheds Sutherland represented LBL in this case.

The High Court

The defendant's claim for rectification to reduce the extent of the land in the new folio and to vary the boundaries was dismissed by the High Court (the "**Court**"). The Court found no evidence of error in the Land Registry. The Court held that the PRA plotted and registered the land on foot of replies from solicitors who had authority to answer queries as to the boundaries of the land. The Defendant appealed to the Court of Appeal (the "**CoA**").

The Court of Appeal

The CoA dismissed the appeal, finding that the High Court was correct in its conclusion on the absence of evidence of error in the Land Registry. The CoA found that the PRA was entitled to proceed with the registration on the basis of instructions and responses to its queries from solicitors for the party applying for first registration to the effect that the boundaries were correct, and in doing so it did not err within the meaning of section 32.

Section 32 of the 1964 Act

Costello J delivering a unanimous CoA decision provided a succinct summary of the law in relation to rectification under section 32 of the 1964 Act, namely:

1. Under section 32(1), errors in the register and registry maps originating in the Land Registry can be corrected by consent of the parties, by the PRA or by the court.
2. The jurisdiction is confined to errors occurring in the registration process only; the error must originate in the Land Registry.
3. Section 32 has no application to rectification of an instrument.
4. The court must be of the opinion that the error can be rectified without injustice to any person.
5. The court can order rectification on any terms, including as to costs, as it considers fair.

Commentary

The judgment of the CoA is welcome as it provides guidance on the availability of the remedy of rectification under section 32 of the 1964 Act. It remains the case that even where the above elements referred to by the CoA are satisfied and an error in the Land Registry is established, it does not necessarily follow as a matter of course that rectification will be ordered. The power of the court to order rectification under section 32 remains a discretionary remedy.

Key contacts

To discuss the judgment in more detail or for further information please contact



Dermot McEvoy

Partner, Dispute Resolution & Litigation
+353 1 6644 238
dermotmcevoy@eversheds-sutherland.ie



Aidan Kirrane

Associate, Dispute Resolution & Litigation
+353 1 6644 256
aidankirrane@eversheds-sutherland.ie

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