

Helping our clients to achieve

Article

Title: 'Good fences make good neighbours?'

Date: 4th October 2007

by **Howard Gardener, senior partner specialising in disputes and family law**

Direct line 01256 854632 email hgardener@phillips-law.co.uk

If this title of one of Robert Frost's best known poems does not quite ring true, you may be one of those people heading for a boundary dispute. Property ownership is of great personal importance and what starts as a minor disagreement may quickly escalate into full-scale litigation that can spiral out of control.

In most areas of litigation it is relatively easy for an experienced solicitor to advise a client at the outset as to how a case might be approached, identifying a range of achievable outcomes, and to perform a cost benefit analysis.

Boundary disputes however pose a particular difficulty. The value of the land in issue is usually negligible so any cost benefit analysis would generally dictate that no action should be taken or that the client simply capitulates to the demands of the neighbour. From a financial point of view there is generally no good reason for a client to become involved. However boundaries change over time, particularly in older properties, or in villages where they have simply been agreed between cooperating neighbours there may be little or no documentation. However diverted water courses, a moving bramble hedge or a moving wooden fence is not uncommon. So how can you be sure where your boundary is and what should you do if your relationship with your neighbour deteriorates?

Call the experts

Clients frequently regard boundaries and territory as being of great importance to them. The skill of the solicitor must be in recognising the importance of the dispute to the client but, at the same time, containing the dispute so far as possible. Most cases turn on relatively few issues and the outcome depends on proper examination of the evidence in respect of those issues. Generally the most important evidence is in the form of the written documents, but they can be contradictory. Clients involved in a boundary dispute often want to raise allegations

Helping our clients to achieve

concerning another's behaviour because of the personal nature of the situation. However it is usually irrelevant to the legal issues and is certainly of little help to a Judge having to decide where the boundaries lie.

In boundary disputes it is common for there to be no serious issues as to facts and for cases to rely solely on the interpretation of documents and features on the ground. A first move can be to instruct a single joint expert to carry out a site examination, examine all available objective evidence and photographs, prepare a report and to accept that for the neighbours that report should be binding. Very often a court will want that sort of evidence. Where agreement can be reached then it is important to record that properly at the Land Registry. However if the matter is not swiftly settled, the Court of Appeal has gone so far as to say that professional advisers have a duty to ensure that clients are aware of the potentially catastrophic consequences of litigation of this sort. Mediation and other alternative dispute procedures must be strongly recommended at the outset, particularly in the case of boundary disputes and a Judge is likely to be highly critical if a genuine attempt has not been made to explore matters through mediation.

It is important not to take entrenched positions and try and get good legal and expert surveyor advice and work out a resolution without going to court, or if going to court, making sure the costs are kept within sensible bounds.

Howard Gardener, senior partner and civil mediator at Phillips says "The financial value of the boundary often bears no relation to the importance of the dispute to the client, but good advice and, even better, a good mediation can result in both parties ending up as good neighbours and saving the costs of going to court".

Howard Gardener is senior partner at Phillips Solicitors and specialises in disputes, mediation and family law. You can call Howard on his direct line: 01256 854632 or you can email

Howard on: hgardener@phillips-law.co.uk

ENDS

Note to editor: Phillips is a leading law firm in Basingstoke, with nearly 60 members of staff. We offer a comprehensive range of services to business and private clients, locally and nationwide.

Wills, probates and elderly client matters
Divorce, matrimonial and mediation services
Residential property conveyancing
Civil litigation and commercial mediation services

Company and commercial matters
Employment matters
Leases and tenancy agreements
Commercial property

For more information, contact:

Pam Whittle, marketing manager, Phillips Solicitors, Town Gate, 38 London Road, Basingstoke, Hants RG21 7NY.
www.phillips-law.co.uk t. 01256 854642, f. 01256 364333 e. pwhittle@phillips-law.co.uk