

## IN THE SUPREME COURT

**Mark v Wendy**

Wendy owned a farmhouse and 100 acres of surrounding land in the village of Etherington. Mark owned a mechanic's garage and 10 acres of land, bordering a portion of the eastern boundary to Wendy's land. In 1993, Mark saw Wendy in the village pub. Mark told Wendy that he had recently purchased a quad-bike and asked if she would mind if he rode it over an area of Wendy's land (the disputed area) that was ideal rugged terrain for quad-biking. Wendy said "yes, feel free". Mark subsequently purchased another quad-bike for his son, Keith, and they would ride together over the disputed area. Subsequently, Mark and Keith purchased more quad bikes, and allowed them to be rented and ridden over both Mark's land and the disputed land.

One afternoon in January 1997, Wendy visited the same pub, and was surprised to see a flyer attached to a noticeboard for Etherington Quad Bikes, with the address of Mark's garage. On returning home, Wendy sent an email to the address at the bottom of the flyer, etheringtonquadbikes@yahoo.com, asking Mark to stop driving quad bikes over her land. Mark did not reply, and continued to ride and rent out the quad bikes as he had before.

In 2005, Wendy received an email saying "Wendy. Can I buy the quad-bike land? Mark." Wendy did not reply.

In August 2009 Wendy decided to sell the entirety of her property so that she could emigrate to Barbados. She commenced possession proceedings over the disputed land against Mark in the county court. Mark defended the claim on the basis that he had acquired the disputed land by adverse possession.

Laurence J found the following facts:

1. Title to Wendy's farmhouse and surrounding land was unregistered.
2. The disputed area of land was 5 acres and there was no visible boundary between this and Mark's own land.
3. Wendy had been overheard in the pub in 2001 saying "he can do what he likes with his sodding quad-bikes".
4. Mark was the owner of etheringtonquadbikes@yahoo.com and admitted sending the email to Wendy.

Laurence J found for Wendy, as by asking Mark to stop driving the quad bikes over the land and later publicly changing her stance, Mark had been granted an implied licence, following the test in *Batsford Estates (1983) Co Ltd v Taylor* [2005] EWCA Civ 489. On the facts, a reasonable person would have appreciated that Mark's use of the land was only by implied permission from Wendy, the owner of the land, and not by adverse possession.

Mark's appeal was successful. The Court of Appeal found that:

1. The decision in *Batsford Estates* was inconsistent with the earlier decision in *R (on the application of Beresford) v Sunderland City Council* [2003] UKHL 60. The test for whether there was a licence was whether there was a communication, by writing, by spoken words or by overt unequivocal conduct which is intended to be understood, and is understood, as permission to do something which would otherwise be an act of trespass. There was no such overt act communicated to Mark and therefore Mark's use of the land was not by implied licence and as such satisfied the requirements for a finding of adverse possession.
2. Although Mark had acknowledged Wendy's ownership of the disputed land by email in 2005, this did not satisfy the requirements of Sections 29(2) and 30(1) of the Limitation Act 1980 as it was not signed, and as such the period of adverse possession was not interrupted.

Wendy appeals on the following grounds:

1. The Court of Appeal had erred in finding that the decision in *Batsford Estates* was inconsistent with the decision in *Beresford*. *Beresford* was a decision in a different area of law preceding *Batsford Estates*, and as such the authority of the test as used in *Batsford Estates* as a case in the present subject matter, must be binding to establish an implied licence as opposed to adverse possession.
2. In the alternative, as in *Good Challenger Navegante S.A. v Metalexportimport S.A* [2003] EWCA Civ 1668, the purpose of the provision of Sections 29(2) and 30(1) of the Limitation Act 1980 should be considered and the wording construed to include email correspondence, enabling the email sent by Mark to constitute acknowledgement of Wendy's title to stop time running.