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Case No: LC-2024-874

IN THE UPPER TRIBUNAL (LANDS CHAMBER)
AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)
Ref: REC/2022/0022

Royal Courts of Justice, Strand,

12 June 2025

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LAND REGISTRATION - RECTIFICATION OR SETTING ASIDE OF DOCUMENTS – transfer of land – unintended transfer of an additional parcel of land – conveyancer's error – "outward expression of accord" in the form of parties' communication through estate agents – supporting evidence – exclusion of relevant evidence

BETWEEN:

MS SIAMA KHURSHID

Appellant

and-

PHILOMENA SAM-YORKE

Respondent

39 Gordon Place,
Reading,
Berkshire, RG30 1LA

Upper Tribunal Judge Elizabeth Cooke
9 June 2025

Mr David Grant KC for the appellant, instructed by Neal Turke LLP
Ms Gabriella Sam-Yorke for the respondent

The following cases were referred to in this decision:

Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38
FSHC Group Holdings Ltd v GLAS Trust Corporation Ltd [2019] EWCA Civ 1361
Misys v Misys Retirement Benefit Trustees Ltd [2012] EWHC 4250
Ralph v Ralph [2021] EWCA Civ 1106

Introduction

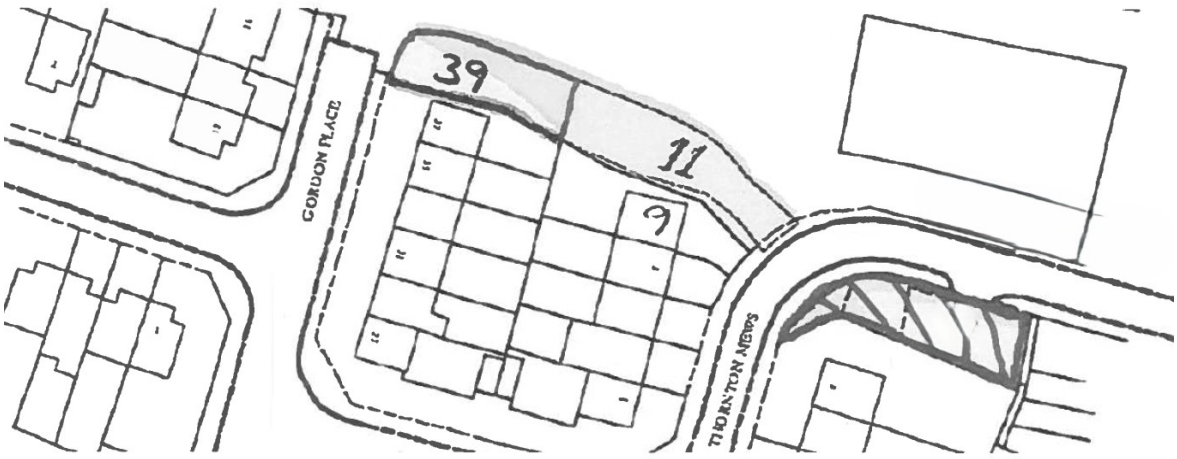
1. Mistakes happen. They happen even to conscientious legal professionals, because lawyers are human. Often mistakes can be fixed, and the law relating to the rectification of documents has been developed for that purpose. This appeal arises from a conveyancer's error whereby too much land was transferred from the appellant to the respondent, and I have concluded that there s a clear case for rectification of the transfer on the basis that the terms of the transfer did not represent the parties' intentions.

2. The appeal is from the First-tier Tribunal's refusal of rectification in response to an application made by the appellant, Ms Siama Khurshid; as I shall explain the FTT made some errors of law, but it also took some problematic procedural decisions which made the task of the judge in the FTT particularly difficult. The appellant was represented in the appeal by Mr David Grant KC, and the respondent Ms Philomena Sam-Yorke by her niece Ms Gabriella Sam-Yorke; I am grateful to them both.

The issue in the appeal

3. The appellant owns land in Reading, Berkshire, which is managed for her by her father-in-law Mr Mohammad Saood who is a property developer. In 2015 he obtained planning permission to build two detached houses on adjacent plots, one next to 37 Gordon Place and the other next to 9 Thornton Road. He built the two houses, now known as 39 Gordon Place and 11 Thornton Road, and both have now been sold; first the latter in 2017 and then the former, with which this appeal is concerned, to the respondent in 2019.

4. The title to 39 Gordon Place comprises a number of different parcels of registered land; it resembles a piece of pastry made by sticking the trimmings together after one has made a pie. One of the titles was BK402889. The essence of the mistake with which this appeal is concerned is this: the appellant's solicitor says that he was instructed to sell 39 Gordon Place, but by mistake he included the whole of BK402889 in the sale because he did not realise that that title number also included a plot of land ("the Disputed Land") about 44 metres away from number 39 and separated from it not only by the entire length of 11 Thornton Road but also by a road. The plan below shows the relative positions of the three properties, with the disputed land hatched.



5. The second plan below is the registered title plan for BK402889 which shows how the land within that title number has been eroded by the removal of a small corner, and of land that now forms part of the title to 11 Thornton Road, but still includes the Disputed Land on the other side of Thornton Road. I surmise that it used to form a contiguous strip before Thornton Road was built and adopted.

6. The appellant's case is that the transfer in Form TR1 executed by the parties should be rectified, because what they agreed to buy and sell was just 39 Gordon Place and that the Disputed Land ought to have remained in Ms Khurshid's ownership.

The law relating to the rectification of documents

7. Rectification is an equitable remedy, which means that an applicant is not entitled to it as of right on proof of certain facts; instead, the court or tribunal has a discretion whether or not to grant it.

8. Subject to that over-arching principle, rectification can be ordered on the basis of mistake, and the law classifies mistakes in a number of ways. In the FTT the appellant pleaded both common mistake and unilateral mistake, but the latter is not pursued on appeal and the only concept with which the Tribunal is here concerned is common mistake. The idea behind common mistake is that the parties to a contract or other document shared a common intention, and by mistake that intention was not reflected in the document. The authorities have travelled a roundabout route in terms of the nature of that shared intention, but the settled position following the decision of the Court of Appeal in *FSHC Group Holdings Ltd v GLAS Trust Corporation Ltd* [2019] EWCA Civ 1361 is that what has to be proved is the parties' subjective intention – in other words, what they actually intended rather than what might objectively seem to be their intention on the basis of documents and other evidence.

9. The decision in *FSHC* thus rejected the idea that rectification was available only on the basis of the objectively ascertained intentions of the parties, laying to rest the controversy raised by what Lord Hoffmann said in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38. Rectification is based, not on the principle that parties must abide by what they

can be seen (objectively) to have agreed, but on the principle that it is unconscionable for a party to seek to enforce a written agreement that is inconsistent with what the parties both subjectively intended and understood each other to intend (Leggatt LJ, *FSHC* at paragraph 146).

10. The parties must have understood each other's intentions; private intentions that they never communicated to each other will not do. As the Court of Appeal put it, there must be an "outward expression of accord" (*FSHC* paragraph 73 and following), although that may include understandings that are so obvious as to go without saying (*FSHC* paragraph 84, quoting with approval *Chitty on Contracts*).

11. In *Ralph v Ralph* [2021] EWCA Civ 1106 the Court of Appeal had to consider an application for rectification of a transfer, where the transferees' solicitor had ticked the box indicating that the two transferees of the land, who were father and son, would hold the land as tenants in common without discussion with them. The son now sought to rectify the document by un-ticking the box. The application failed because there was no shared intention held by the two parties that the box should not be ticked. At paragraphs 26 and following the Master of the Rolls, Sir Geoffrey Vos, left open the question whether, in relation to a document whose terms have not been negotiated and which is not a commercial contract, the principles set out in *FSHC* might not be applicable.

The facts

12. As I said at paragraphs 3 and 4 above Mr Saood built and sold, on the appellant's behalf, two detached houses, each built at the end of a street as shown on the plans above. Number 39 Gordon Place was put on the market in 2018; the estate agent's particulars gave its postal address and described it as a three-bedroomed detached house with a paved patio and detached garden, and easy access to public transport and to Reading town centre. Plans, and photographs of the house and garden, were included in the particulars.

13. The respondent made an offer that was accepted and on 26 November 2018 the estate agents wrote to the appellant's solicitor reporting that a sale of 39 Gordon Place had been arranged, enclosing a memorandum of sale, and asking him to get in touch with the purchaser's solicitor and prepare a draft contract. On 30 November 2018 Neale Turk LLP wrote to the respondent's solicitor under the heading "39 Gordon Place, Reading" with a draft contract for approval and copies of "Land Registry title entries and title plan for part being BK411845 … for part being BK402889 … for the remainder being BK414911".

14. There followed detailed correspondence between the solicitors, mostly arising from the fact that this was a new property, and so there were queries about water and gas, about a snagging inspection, about an NHBC certificate and so on. During the conveyancing process the respondent sent to the appellant's solicitor a copy of her "Home Buyer's Report", that is, the survey she had arranged in relation to 39 Gordon Place, and using the recommendations in that survey she negotiated some additional terms for the contract providing for some work to be done before completion, set out as a list of things to be done by the seller within 21 days of completion. There was correspondence between the solicitors about a Deed of Easement which was needed from the Reading Borough Council providing for vehicular access to the property. Also in evidence before the FTT was email correspondence between Mr Saood and his architect, which referred to the sale of 39 Gordon Place.

15. On 9 January 2019 the respondent's solicitor wrote to Neale Turk LLP asking for office copy entries for various title numbers, not including BK402889. On 24 January 2019 Neale Turk LLP wrote to the respondent's solicitor in answer to some queries and referred to "land registered under title number BK402889 which includes part of the land that the property is constructed on".

16. I pause to point out all the correspondence described above is typical of, and only of, a perfectly ordinary domestic conveyancing transaction and nothing else. It bears no resemblance to the sale of a vacant plot of land with development potential. Nothing in the sales particulars, the correspondence, or the purchaser's survey made reference to anything other than 39 Gordon Place. It is completely obvious, as a matter of common sense let alone professional experience, that had the appellant intended to sell the Disputed Land – which as can be seen on the plan is big enough to build a house on – then the Disputed land would have been a prominent feature in the sales particulars. Had the appellant intended to buy the Disputed Land she would have arranged a survey not just of 39 Gordon Place but of the Disputed Land as well.

17. The draft contract itself described the land as "39 Gordon Place, Reading RG30 1LA". Opposite "title numbers" it listed BK411845, BK402889 and BK414911. That was correct as far as it went but the contract should have also said that only part of BK402889 was included in 39 Gordon Place. There was no plan attached to the contract.

18. On 29 January 2019 Neale Turk LLP sent an email to the respondent's solicitor, in answer to a query about the title plans which arose because of course the new house was not on the Land Registry plan, and said that there should be no difficulty "as the application consists of the transfer of three whole titles". Aside from the draft contract itself that is the only reference in the correspondence to the sale of the whole of BK402889. The following day contracts were exchanged and on 1 February 2019 the sale was completed. The transfer, which Neale Turk LLP drafted and provided to the respondent's solicitor, was a TR1 (whereas a sale of part would have been a TP1); it set out the three title numbers, did not state that part only of BK402889 was transferred and did not include a plan. Thus the whole of BK402889 was transferred to the respondent.

19. In 2022 Mr Saood applied for planning permission to build on the disputed land, and discovered that the appellant no longer owned it. A request for a transfer back was refused, and so an application for rectification was made to the FTT on 16 December 2022.

The proceedings in the FTT and the FTT's decision

20. With the application was filed a witness statement by the appellant's solicitor, who set out the chronology beginning with the 2015 planning permission and continuing through the conveyancing process. He explained that when he drafted the contract he had forgotten that BK402889 also included the Disputed Land, and that as a result the Disputed Land was transferred by mistake. He pointed out that since the sale the Disputed Land had remained fenced with a locked gate, with the appellant holding the only key. Exhibited to his witness statement was all the correspondence from his conveyancing file to which I have referred above.

21. On 30 January 2023 the FTT directed the appellant to serve her application on the respondent, and the respondent to file and serve any objection to the application within 28 of receipt of the application.

22. On 5 June 2023 the FTT made an order under rule 9 of its rules that unless the respondent provided any objection to the application by 26 June 2023 she might be debarred from taking further part in the proceedings. It seems a brief objection was received because on 1 August 2023 a further rule 9 notice was issued requiring "a detailed response to the application" by 21 August 2023. On 7 September 2023 the respondent was given an extension of time for compliance. From the reasons given it is apparent that Ms Philippou, the solicitor who acted for the respondent in the purchase, had died and her practice was subject to the intervention of the Solicitor's Regulatory Authority so that it was proving difficult to obtain the conveyancing file; however, it was not until 17 June 2023 that the respondent had instructed solicitors in connection with the FTT proceedings. On 2 November 2023 the respondent was given a further extension until 16 November 2023.

23. On 16 November 2023 the respondent filed her grounds of objection. Her grounds stated that there was no mistake; that when she spoke with the estate agent about 39 Gordon Place he had told her there was "the added bonus" of the Disputed Land; and that she had viewed the property with her niece Ms Gabriella Sam-Yorke and was shown the Disputed Land. There was no common mistake and the inclusion of the Disputed Land "formed a crucial part of the Respondent's decision to purchase the Property". She also said that it would be inequitable to rectify the transfer now that three years had elapsed since her purchase. She said that she still had not been able to get hold of her former solicitor's conveyancing file. The grounds were signed by the respondent's solicitor, under the words "The Respondent believes the facts stated in this application are true".

24. On 11 December 2023 the FTT ordered the parties to make disclosure by 22 January 2024, and to file witness statements by 4 March 2024. On 7 February 2024 the FTT made an order that unless the respondent gave disclosure by 23 February 2024 she would be debarred from adducing documents or other evidence in support of her defence of the claim. An order debarring her was made on 1 March 2024. The order stated that the respondent had persistently failed to make any attempt to engage with the proceedings, had made no attempt to compile a list of documents for disclosure, and had offered no evidence of her efforts to obtain the conveyancing file. The consequence of that order was that there was no evidence whatsoever from the respondent at the hearing before the FTT; there was not even written evidence, because the form of the statement of truth at the end of her grounds of objection meant that neither she nor her solicitor had attested to the truth of the grounds.

25. In August 2024 the appellant's solicitors asked whether it would be possible for her to give evidence by video link as she resides in Australia, and also applied for permission to adduce a further witness statement made by Mr Saood on 17 July 2023 which was served on the respondent. In it he explained that the Disputed Land had been fenced since 2002 and had been used as a building yard by him and his workforce and for storage, and that it was visited by his workmen regularly. He exhibited photographs of the locked gates, and of his workman cutting down ivy and brambles growing over the fence.

26. At around the same time it seems that the respondent asked for permission to rely upon an email from a Mr Hughes of Landmark Auctions. On 25 September 2024 the FTT stated

that it was minded to allow both pieces of evidence to be admitted and requiring either party, if they had any objection, to make submissions by 4 September 2024. The appellant's solicitors replied reminding the FTT of its debarring order.

27. On 4 October the FTT emailed the parties to say that the respondent did not have permission to rely on any further documents because of the order of 1 March 2024. As to Mr Saood's statement it said:

> "As the Respondent will not have the opportunity to respond to the further witness statement by reason of the debarring order it is not in the interests of the overriding objective to admit the late statement."

28. The FTT then conducted a hearing on 18 October 2024. The appellant was represented by counsel (not Mr Grant KC) and the respondent by her niece Ms Gabriella Sam-Yorke. The appellant renewed her application to admit Mr Saood's evidence but was refused on the basis that it was too late and was not relevant.

The FTT's decision

29. The respondent was therefore prevented from offering any evidence at the hearing before the FTT, which took place on 18 October 2024; she was represented at that hearing by Ms Gabriella Sam-Yorke. The appellant's former solicitor gave evidence; he was not cross-examined by Ms Sam-Yorke although I understand, from Mr Grant KC, that he was nevertheless questioned by the judge.

30. The judge set out the evidence of the appellant's solicitor. She also referred to an email addressed to Mr Saood from the estate agents who sold the property, dated 21 November 2023, which said:

> "We were completely unaware of any land remote from the subject properties and in particular 39 Gordon Place which indicated this land which we now understand to be off Thornton Road would be included…Our records show you agreed a sale subject to contract on 19 November 2019 to Ms Philomena Sam-Yorke following an arranged and accompanied viewing for the aforementioned part a 9:30 on 17th November 2018. As we were not availed of knowing of this remote piece of land in Thornton Road until now we couldn't possibly commit to selling something we were not aware of at the time."

31. The judge said that since neither the respondent nor the estate agent had provided a witness statement and neither was available for cross-examination she gave no weight either to the respondent's grounds of objection or to the estate agent's email. She discussed the law, considered the evidence and said that:

    a. There was no evidence as to what the subjective intentions of the parties were;

    b. That Mr Saood did not give a witness statement as to his intention;

c. That there was no contemporaneous evidence demonstrating what the appellant's or Mr Saood's instructions were; that Mr Saood's instructions to the solicitor were "not disclosed or referred to" in his solicitor's witness statement; that Mr Saood's intention was not referred to in his solicitor's witness statement; and

d. The correspondence "all refers to selling the whole of Title No BK402889".

32. The judge concluded that there was no convincing proof of a common intention to exclude the Disputed Land from the sale, and refused rectification on the basis of common mistake. She also refused rectification on the basis of unilateral mistake, and there is no appeal from that.

The appeal

33. There are four grounds of appeal from the FTT's decision on common mistake:

34. Ground 1 is that where the document sought to be rectified is a TR1 whose drafting was not the subject of negotiation there is no need for an "outward expression of accord" between the parties as required by the test set out in *FSHC*.

35. Ground 2 is that, if ground 1 fails, the judge was wrong in her application of the law because she failed to have regard to the possibility of tacit agreement, failed to have regard to the fact that the evidence of professional advisers may be evidence of the intention of the parties, and failed to have regard to the conduct of the parties following the transaction as evidence of their intentions at the time of execution. Ground 3 is that therefore in light of all the evidence there was an outward expression of accord. I take grounds 2 and 3 together below.

36. Ground 4 is that the FTT took the wrong approach to the absence of witness statements from Mr Saood and from the estate agents.

37. At the hearing of the appeal the respondent was again represented by Ms Gabriella Sam-Yorke. When Mr Grant KC was part-way through his submissions she asked if she could be permitted to say what she had to say and then leave because she was unwell. I pointed out to her that if she left before Mr Grant KC had finished she would be unable to answer any points he made after she left. The Tribunal took a short break and Ms Sam-Yorke confirmed that she wished to speak and then leave, and Mr Grant KC kindly made no objection to her doing so despite being in the middle of his submissions. Ms Sam-Yorke spoke very briefly; in essence, she said that solicitors should check their work and should not make mistakes. She also said that she and the respondent had inspected the Disputed Land before buying it; but she accepted that she could not give evidence. I discussed briefly with her a further matter to which I refer at paragraph 60 below. She then left the hearing.

Ground 1: no need for an outward expression of accord

38. By this ground Mr Grant KC seeks to build on the suggestion made by the Master of the Rolls in *Ralph v Ralph* that where a document has not been negotiated the *FSHC* test for the rectification of commercial documents may be inapplicable.

39. The facts under consideration in *Ralph v Ralph* were very different from those in issue here, even though *Ralph v Ralph* was about a TR1. The dispute there was not between vendor and purchaser, who had negotiated the terms of sale and purchase, but between the two persons comprising the purchaser whose solicitor had ticked a box without asking them. And the dispute was not between arms-length parties but between family members. It is obvious that that scenario is very unlike the commercial scenario in issue in *FSHC*. The present dispute however is between vendor and purchaser, who never met but who did communicate via the estate agent and who then through their solicitors negotiated the terms of the contract (including special conditions relating to matters that needed to be made good in the new house (see paragraph 14 above)). This does not seem to me to be an appropriate case in which to pick up and develop the Master of the Rolls' suggestion and I decline to do so – particularly since the appeal so clearly succeeds on the other grounds.

Grounds 2 and 3: the outward expression of accord

40. I take the law to be as stated in *FSHC*; if there are exceptions to the principles set out by the Court of Appeal this is not one of them. Accordingly in order to establish a case for rectification the appellant has to show that the subjective intention of the parties to the TR1 was to transfer 39 Gordon Place and not the Disputed Land, and that they communicated those intentions to each other in what the courts have called an "outward expression of accord".

41. In the FTT the judge took the view that there was no evidence of the parties' intentions, let alone that they had communicated their intentions to each other. Mr Grant KC argued that she was wrong for three reasons.

42. First, he argued that she was wrong not to regard the evidence given by professional advisers as evidence of the intentions of those who instructed them. In the present context I do not think authority is needed for that proposition; Mr Grant KC cited *Misys v Misys Retirement Benefit Trustees Ltd* [2012] EWHC 4250 and there have doubtless been many such instances.

43. I think the judge was troubled by the fact that there was no evidence from the appellant herself. But she was not present at the time of the transaction, Mr Saood acted on her behalf., and it has never been disputed that he acted for her and was the one who agreed the sale and instructed the solicitor. Since she was out of the jurisdiction at the time of the transaction and at the time of the hearing there was no particular purpose in her giving evidence. I shall comment later on the exclusion of Mr Saood's evidence.

44. Part of the everyday reality of domestic conveyancing is that the parties rarely communicate with each other directly but do so through estate agents and solicitors. In my judgment, in that context there could hardly be better evidence of the parties' intentions to buy and sell 39 Gordon Place, only, than the estate agents' particulars (composed on the appellant's instructions) or the memorandum of sale (reflecting the subject to contract agreement between the parties, communicated to each other through the estate agent)?

45. The particulars of sale do not include the Disputed Land. There is no possible construction of them that could lead anyone to suppose that the Disputed Land was included in what was offered for sale. This is a newly-built, but otherwise perfectly ordinary, three-bedroomed detached house in Reading. Property owners rarely know anything about the legal title to their property and there is no reason to suppose that the appellant, or Mr Saood, or the respondent knew anything about the title numbers for 39 Gordon Place. There is no reason to suppose that any of them knew that it was comprised of more than one registered title or that the Disputed Land was part of the same title as was part of 39 Gordon Place. What they actually intended – to buy and sell 39 Gordon Place, only – was perfectly clear from the estate agent's particulars, from the memorandum of sale, and from the appellant's solicitor's evidence.

46. As to the solicitor's evidence, it was as I understand it not challenged by the respondent, in that Ms Sam-Yorke did not cross examine him. His evidence was that he made a mistake about the title to 39 Gordon Place. It was a mistake because his client did not instruct him to sell the Disputed Land. Moreover all the correspondence he exhibited to his statement refers only to 39 Gordon Place. Mr Grant KC argued that the judge erred in disregarding the appellant's solicitor's evidence given at the hearing (to which she referred at her paragraph 23) that had the Disputed Land been included in the sale, the correspondence would have referred to it and so would the contract. I agree, and the point is in any event obvious as a matter of ordinary conveyancing practice.

47. This was not a hasty conveyancing transaction done by unqualified assistants. It was conducted with care by solicitors who – as can be seen from their correspondence – did the work themselves and did it carefully, going into detail about the work required on the property, adjacent land, an easement required from the local authority and so on. If one had been instructed to sell, or the other to buy, the Disputed Land it would have been the subject of express correspondence. As to the actual references to title numbers, the judge was simply wrong to say that the correspondence all referred to the whole of BK402889. One letter mentions a sale of the whole of the title number. That is all.

48. Mr Grant KC's second argument was that this was a case of tacit agreement; it went without saying that the Disputed Land was not included; and I agree that in a number of cases the courts have acknowledged that agreement may be tacit and that a point can be one that goes without saying. I would not characterise the parties' agreement here in that way. It is not that the exclusion of the Disputed Land was tacitly agreed. It was that the exclusion of the Disputed Land was irrelevant to their agreement because there was never any suggestion that it might be included. People do not agree to buy and sell houses by reference to their title numbers. They do so by reference to the property itself; and here, that was 39 Gordon Place, throughout.

49. Third, Mr Grant KC said that the judge failed to have regard to the parties' conduct after the transaction. Obviously evidence of later events is relevant only insofar as it sheds light o the intentions of the parties at the time of the transaction, and therefore reference to later events has to be regarded with care. But Mr Saood's evidence that the Disputed Land remained in his possession and in frequent use after the sale of 39 Gordon Place is obviously relevant evidence of the fact that it never occurred to him that it had been sold. The appellant's solicitor said as much in his witness statement (paragraph 20 above), but rather briefly and no doubt the judge having decided that his evidence was not evidence of his client's intention felt that what he said about the later use of the land was not very

helpful. But Mr Saood was the one who had the key to the gates and was using the land, and his evidence was relevant and important. It was not before the judge because it had been excluded by the FTT on 4 October 2024 and was excluded again by the judge in the belief that it was irrelevant. I deal with that point under ground 4.

50. As to grounds 2 and 3 I agree that the judge in deciding that there was no evidence of the intentions of the parties to the TR1 and no outward expression of accord fell into error and wrongly disregarded the ample evidence of those intentions and that accord. Her decision is set aside.

Ground 4: case management decisions about the evidence

51. Mr Grant KC raised two further arguments about the way the judge looked at the evidence, or lack of it, before her.

52. First, one of the judge's reasons for refusing rectification was the absence of evidence from Mr Saood; yet Mr Saood had made a witness statement several months before the hearing and the FTT did not allow the appellant to rely upon it – first in its email of 4 October 2024 and then again at the hearing. For the appellant it was argued that that was a procedural error on the part of the FTT.

53. I agree. As we saw above, the FTT excluded Mr Saood's evidence because the respondent could not respond to it (paragraph 27 above). That was an extraordinary decision, in effect punishing the appellant for the respondent's default. Moreover the evidence was excluded despite the fact that the respondent did not object to its being adduced. The FTT's email of 4 October 2024 is signed by the FTT's listing officer but I assume that it was written on the instructions of a judge. It placed her in a very difficult position because important evidence was not before her. The Upper Tribunal will rarely interfere with a case management decision made by the FTT, and only if an error of law or some other irrationality can be shown. The decision to exclude Mr Saood's evidence was irrational, and was taken in disregard of relevant considerations. The judge's own decision at the hearing to continue to exclude it because it was submitted too late and because it was irrelevant would not have been made had the previous direction not been given and I need say no more about it.

54. If the application for rectification had failed only because Mr Saood had been prevented from giving evidence then I would have set aside the FTT's decision and remitted the matter for a re-hearing. But since the appeal has already succeeded on grounds 2 and 3 there is no need for me to do that.

55. Second, Mr Grant KC argued that the FTT should have attached some weight to the estate agent's email (paragraph 30 above) which confirmed that the estate agents knew nothing about the Disputed Land. In my judgment the judge was right to accord it less weight than she would have given to a witness statement by the estate agent; but to dismiss it as readily as she dismissed the respondent's account of the transaction was, again, irrational. The respondent's account was implausible in light of the contemporaneous documentary evidence, whereas the estate agent's email was entirely consistent with what can be seen in the sales particulars and the memorandum of sale and with the appellant's solicitor's email.

56. However, again, no further consequences flow from that since the appeal has already succeeded.

Conclusion

57. I have set aside the FTT's decision. It is abundantly clear that the evidence all pointed to the fact that the parties to the TR1 intended to sell and buy only 39 Gordon Place.

58. Should the Tribunal substitute its own decision and order rectification? I see no reason why it should not do so. The respondent will suffer no prejudice thereby; she has made no use of the Disputed Land and she did not pay for the Disputed Land. The delay was understandable: Mr Saood did not discover the mistake until 2022 because there was no reason why it should occur to him that the Disputed Land was no longer in the appellant's ownership. Equally it cannot have occurred to the respondent that it had been transferred to her until she was alerted to that fact by Neale Turk LLP after Mr Saood's discovery.

59. Rectification is an equitable remedy and the appellant must come to court with clean hands. In the course of preparing for the appeal Mr Grant KC established that 39 Gordon Place was in fact composed of not three but of four titles; a thin sliver of land along the northern boundary remains in the appellant's ownership in title BK432176. It seems that the eastern half of the land comprised in that title number was transferred to the new owner of 9 Thornton Road, but the western half was not transferred along with 39 Gordon Place. The appellant is ready and willing to transfer it to the respondent. Neale Turk LLP have written to Ms Gabriella Sam-Yorke more than once to alert her to this, and the point is set out in Mr Grant KC's skeleton argument. No response has been made to that point on the part of the respondent. At the hearing of the appeal I asked Ms Gabriella Sam-Yorke what she thought ought to be done about the newly discovered sliver of land; she said that of course it should be transferred to the respondent because this was a sale of a house and this land is part of it.

60. There is no application before me in relation to BK432176 and I make no order about it. But I order that the TR1 of 39 Gordon Place is to be rectified by the inclusion of a plan and by words to make it clear that the transfer was of part only of BK402889. I ask the appellant's solicitors to provide a draft order.

Upper Tribunal Judge Elizabeth Cooke

12 June 2025

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the

Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.