

Adverse possession, relativity of title and a salutary lesson for appellants: *White v Amirtharaja* [2022] in the Court of Appeal

Chris Bevan*

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Introduction

In the *White v Amirtharaja* litigation,¹ the court was called upon to adjudicate fascinating questions of law, fact and practice concerning the principles of adverse possession and, in so doing, also offered crucial lessons as to how appeals before the High Court and Court of Appeal are argued and pursued by counsel. As will be familiar to readers of this journal, the law of adverse possession can be deployed to argue that someone who is not the original owner of land and cannot establish title to it, has nevertheless become entitled to that land by demonstrating, as enunciated in now well-known dicta of Slade J *Powell v McFarlane*,² that they have been in factual possession of the land and can prove the requisite ‘intention to possess’ the land for their own benefit to the exclusion of the world. Adverse possession, which has been described by some as legitimising ‘land theft,’ remains one of the more vibrant and eye-catching areas of property law and stems from the historical fixation of our property law on factual possession of land; it can be seen as exuding a “curative effect”³ by which informal acquisition of land by a squatter or trespasser is seen as reflecting the ‘reality’ on the ground of possessory control. Adverse possession is therefore the clearest expression of, and, according to the Law Commission, is best justified on the basis of, so-called relativity of title,⁴ which holds that title land is relative, and never absolute.⁵ Even with the apparent “emasculatation”⁶ of adverse possession in recent years, the case of *White* aptly reflects the enduring legal and factual energy and intellectual and practical import that remains in the law in this area.

The Essential Facts

* Associate Professor in Property Law, Durham Law School.

¹ *White v Amirtharaja* [2022] EWCA Civ 11.

² *Powell v McFarlane* [1977] 38 P&CR 452 Ch

³ M. J. Goodman, ‘Adverse Possession of Land: Morality and Motive’ (1970) 33 MLR 281.

⁴ Law Commission Report No. 254, *Land Registration for the Twenty-First Century: A Consultative Document* (1998).

⁵ See *Ocean Estates Ltd v Pinder* [1969] 2 A.C. 19 at 24, 25 per Lord Diplock. See also *Wells v Pilling PC* [2009] EWHC 556 (Ch) at [7]; [2009] 2 E.G.L.R. 29 at 30.

⁶ M. Dixon, ‘The Reform of Property Law and the Land Registration Act 2002: A Risk Assessment’ [2003] Conv 136, 150.

Adverse possession claims frequently revolve around squatters or trespassers grazing cattle, cultivating crops or farming another's land⁷ and, crucially, often turn on enclosure of that land through fencing, hedges and walls.⁸ The facts of *White* are, however, a little different in that the dispute centred on the use of a passageway between two properties.

The essential facts are as follows. In 2017, Colin White and his mother Frances White ('the Whites') purchased a freehold property in Stanford-le-Hope, Essex called Hollis House and were duly registered as proprietors of the land. Almost immediately, the Whites asserted title to a passageway of between 5 and 6 metres length ('the passageway') which ran from the back garden of Hollis House between two brick buildings, namely an office ('the office') and a workshop ('the workshop'), on the basis of adverse possession by their predecessor-in-title, Mr Bright, who had lived in Hollis house for 40 years from 1977 to 2017. The office and workshop had been purchased in 2017 by Mr and Mrs Amirtharaja ('the Amirtharajas') who were registered as proprietors. Their registered title included the passageway. The Amirtharajas' predecessors in title were the James brothers who had inherited the office from their father and were registered as proprietors in 1998. The registered title to the workshop referred to an Assent⁹ made by the father's executors in the brothers' favour in 1993. The James brothers had applied for and were registered as proprietors of the workshop and passageway in 2005 by way of first registration. Importantly, there was no Assent or any additional documentary evidence in respect of the workshop or the passageway. Instead, the James brothers had provided statutory declarations to support their application for first registration, noting that they inherited the property from their father who had been owner of the property for 44 years. As a consequence of this lack of documentary evidence, Land Registry registered the brothers' with 'possessory title' only – this was so despite the fact the Land Registry's Surveyor was unable to gain access to the passageway during an inspection as it was full of debris and appeared not to be occupied by anyone.

When the Amirtharajas purchased the land from the James brothers in 2017, they therefore also only acquired possessory title. In late 2017, the Whites applied to Land Registry for registration of possessory title to the passageway, supported by a statutory declaration by Mr Bright. Land Registry rejected the application on the basis that Mr Bright's declaration referred to both his occupation of the land and his enjoying a right of way over it. In 2018, the Amirtharajas were granted planning permission to replace the office and workshop with a single unit and it was at this point that the Whites were seemingly triggered to bring their

⁷ See variously *Pye v Graham* [2001] UKHL 30; *Buckinghamshire CC v Moran* [1990] Ch 623; *Powell v McFarlane* [1977] 38 P & CR 452.

⁸ *Seddon v Smith* (1877) 36 LTR 168; *Buckinghamshire CC v Moran* (1990); *Lambeth LBC v Blackburn* [2001] EWCA Civ 912.

⁹ For those unfamiliar, an Assent describes the document and process by which ownership of a property is transferred from a deceased person to a new owner.

court proceedings claiming rights over the passageway through adverse possession. As to the nature and state of the passageway, it had fallen into disuse and, where the passageway met the access road, a locked gate blocked any through route. Keys to the gate were held by the Whites who claimed they controlled access through the passageway and used it also for storage. Proceedings in the County Court were issued in January 2019. In June 2019, Mr Bright executed a transfer of any interest he had in the passageway to the Whites.

The County Court Judgment

The trial took place in October 2019 and the Whites sought an order that the Chief Land Registrar be directed to alter the register by removing title to the passageway from the Amirtharajas' title and including it within title to Hollis House. This, they argued, was on the basis that registration of the James brothers was a mistake and the register must be corrected. In the County Court in Southend, HHJ Holmes held that, yes, it had been a mistake for the James brothers to be registered with possessory title to the passageway in 2005 as they were not in factual possession of it. Under s.9(5) of the LRA 2002, possessory title could only be registered where a person was in 'actual possession' of the land in question; the James brothers were not. HHJ Holmes held that Mr Bright, the Whites' predecessor in title, had been in adverse possession of the passageway for at least the required twelve years prior to first registration in 2005 (under the rules of adverse possession operative in relation to unregistered land – the passageway had been unregistered until 2005) and, additionally, had demonstrated the requisite intention to possess the land. On this basis, HHJ Holmes declared that the Whites were entitled to be registered as proprietors of the passageway with absolute title and ordered the Chief Land Registrar to remove the passageway from the Amirtharajas' title and include it within the Whites' title to Hollis House. Furthermore, there were no 'exceptional circumstances'¹⁰ that prevented rectification.

Quite remarkably, and only coming to light some five months after the County Court judgment was handed down, it became apparent that the proceedings had been issued in the name of three owners of Hollis House, one of whom (Mr William White) had died over a year before HHJ Holmes even heard the case, yet the death was not brought to his attention by the parties. This oversight was made all the more extraordinary by the fact that the judge had referred in his judgment to the deceased Mr White as if he were alive and his use of the passageway for wheelchair access when determining whether to rectify the register.

The Appeal in the High Court

¹⁰ Rectification must be ordered where there is a mistake affecting land not in the possession of the registered proprietor unless there are 'exceptional circumstances': Para 3(3) of Schedule 4 of the LRA 2002.

The Amirtharajas appealed to the High Court¹¹ arguing on several grounds. In summary, they argued that: (1) HHJ Holmes had erred in the weight he had attached to Mr Bright's hearsay evidence; (2) that Mr Bright's user of the passageway was consistent only with use as an easement of access and storage and not with possession with the requisite intention to possess; (3) that HHJ Holmes had erred in applying an incorrect test as to what constitutes a mistake under the LRA 2002; (4) that he had taken into account irrelevant considerations when exploring whether 'exceptional circumstances' existed that would prevent rectification of the register, including that the Mr White needed wheelchair access when he was already dead at the time of proceedings; (5) that including Mr William White as a party to the initial proceedings amounted to an abuse of process; and finally (6) that the judge had been wrong to conclude that the Amirtharajas were not in possession of the passageway at the time of the claim.¹²

Michael Green J presiding heard an application by counsel for the Amirtharajas to amend one of the grounds of appeal (Ground 4(3)) in order to put before the court new evidence that, it was argued, showed that the James family had been owners of the entire estate on which the office, workshop and other properties were situated from 1900 onwards and that they therefore had paper title (and not just possessory title) to the passageway long before any owner of Hollis House could have been in adverse possession. Michael Green J refused the amendment, holding that it would not be right or just to take this fresh evidence into account on appeal but, nevertheless, did allow the unamended Ground 4(3) to run and be heard. The unamended Ground 4(3) itself made clear reference to the argument that the James brothers had paper title to the passageway and this matter was therefore considered, albeit without adducing the raft of new evidence.¹³

After reviewing the authorities and pertinent law on adverse possession at some length,¹⁴ Michael Green J considered each ground of appeal in turn. He held that HHJ Holmes did not properly weight the evidence of Mr Brights against counter factors; that the evidence of possession of the passageway by Mr Bright was 'equivocal' and that this was fatal to the adverse possession claim.¹⁵ Here, Michael Green J drew on the authority of *Littledale v Liverpool College*,¹⁶ where it had been held that installation of access gates by a party with a right of way over the disputed land was too 'equivocal' to demonstrate adverse possession. The gates were installed merely to protect the right of way and did not demonstrate the requisite intention to possess and to exclude others from the land. This line of reasoning had, said Michael Green J, had not been overruled and remained good law post-*Pye v Graham*. He

¹¹ *Amirtharaja v White* [2021] EWHC 330 (Ch)

¹² *Amirtharaja v White* [2021] at [35].

¹³ *Amirtharaja v White* [2021] at [36]-[43].

¹⁴ *Amirtharaja v White* [2021] at [44]-[52].

¹⁵ *Amirtharaja v White* [2021] at [64].

¹⁶ *Littledale v Liverpool College* [1900] 1 Ch 19

placed emphasis on the fact that Mr Bright had placed a gate where the access road met the passageway to prevent unauthorised intruders, including youths, coming into the garden of Hollis House. This was a security measure to protect use of the passageway rather than providing evidence of factual possession or an unequivocal intention to possess it.¹⁷ This was a perspective the County Court judge had not examined and, on this basis, HHJ Holmes had been wrong to find that Mr Bright was in adverse possession of the passageway. Mr Bright's use was one of *access*, to reach the road and to carry garden waste and rubbish out to his car, as well as for storage and not possession of the passageway.¹⁸ This, said Michael Green J, was consistent with a right of way and did not establish adverse possession. "Perhaps the most telling omission"¹⁹ from HHJ Holmes' judgment, was that the judge had ascribed insufficient weight to the fact that Mr Bright had not included the passageway in the original transfer to the Whites (only doing so in 2019, once proceedings had begun). If he truly believed he had title to the passageway, surely he would have transferred it together with Hollis House. The judge had evidently not properly weighed all the evidence in assessing the significance to attach to Mr Bright's statutory declaration.²⁰ Given the findings as to factual possession and intention to possess, it "was obviously not a mistake on the register" for Mr Bright's title to the passageway not to be added to the Hollis House title.²¹ In light of the earlier findings, the grounds of appeal as to "exceptional circumstances" and abuse of process did not require a final resolution.²² Michael Green J did note, however, that in his view no benefit had been gained by including the deceased as a claimant.²³ It was, that said, an "utterly bizarre"²⁴ situation that the deceased's name remained listed as a party to the proceedings but this appeared to have followed from "just a very unfortunate series of events"²⁵ including a change of solicitors and the Whites' not bringing the death to the court's attention. The Amirtharajas' appeal before the High Court therefore succeeded. HHJ Holmes' declaration and order for rectification of the register made would be set aside.

The Whites subsequently sought permission for a second appeal to the Court of Appeal on 12 grounds. Permission was refused by Asplin LJ on all grounds advanced except one, namely that the High Court had erred in permitting the Amirtharajas to run a new argument on appeal which had not been raised at trial. The new argument was that the James brothers had good paper title to the passageway rather than simply the possessory title with which they were

¹⁷ *Amirtharaja v White* [2021] at [66]-[74], [79]-[86].

¹⁸ *Amirtharaja v White* [2021] at [66]-[74].

¹⁹ *Amirtharaja v White* [2021] at [77]-[78].

²⁰ *Amirtharaja v White* [2021] at [78].

²¹ *Amirtharaja v White* [2021] at [90].

²² *Amirtharaja v White* [2021] at [97]-[105].

²³ *Amirtharaja v White* [2021] at [102]-[103].

²⁴ *Amirtharaja v White* [2021] at [100].

²⁵ *Amirtharaja v White* [2021] at [102].

registered (and, in turn, with which the Amirtharajas had been registered). Allowing this new argument before the court was, argued the Whites, “a serious procedural irregularity.”²⁶

The Court of Appeal Judgment

In the Court of Appeal, Nugee LJ gave the only judgment.²⁷ The appeal came down to just one single question: was Michael Green J wrong to allow the paper title issue to be heard? It was argued for the Whites that: (1) the issue of whether the James brothers had paper title to the passageway had not been raised at trial; (2) it therefore amounted a new issue which Michael Green J should not have allowed the Amirtharajas to rely upon in their appeal in the High Court; (3) Michael Green J had impliedly accepted the substance of the new argument and it had ‘infected’ all of his reasoning, undermining his conclusions; and (4) on this basis, the appeal should be allowed, Michael Green J’s judgment set aside and HHJ Holmes’ judgment in the County Court restored. The Whites’ appeal was dismissed. The Court of Appeal accepted points (1) and (2) but did not accept points (3) or (4).

On the paper title point, Nugee LJ accepted that it was ‘plain’ that the issue had not been raised at trial.²⁸

As to whether Michael Green J should have permitted the paper title point to be raised on appeal, this was swiftly handled. Despite refusing to allow the amendment sought to Ground 4(3), Michael Green J nevertheless permitted the paper title argument to run via the unamended Ground 4(3). This was a new argument and, as noted above, one not advanced at trial. If advanced at trial, it might have led to different evidence being adduced, further documents produced, and different questions being asked of witnesses. This new argument should not have been permitted.²⁹

On the paper title argument, counsel for the Whites submitted that Michael Green J had made a “non-explicit finding” that the brothers had paper title to the passageway and this had “infected” the whole of his judgment “like the second colour in a piece of shot silk.”³⁰ Nugee LJ rejected this: no decision or assumption (whether explicit or implicit) by Michael Green J could be read into the judgment – neither had the paper title argument infected his reasoning.³¹

²⁶ *White v Amirtharaja* [2022] EWCA Civ 11 at [41].

²⁷ With which William Davis LJ and King LJ agreed.

²⁸ *White v Amirtharaja* [2022] EWCA Civ 11 at [59].

²⁹ *White v Amirtharaja* [2022] EWCA Civ 11 at [64]-[68].

³⁰ *White v Amirtharaja* [2022] EWCA Civ 11 at [74], see generally [71]-[77]

³¹ *White v Amirtharaja* [2022] EWCA Civ 11 at [71]-[77].

Nugee LJ's findings on grounds (1) to (3) meant that consideration of ground 4 on disposal of the appeal was not strictly necessary. That said, Nugee LJ explained it was difficult to see how the Court of Appeal could have allowed the appeal and restored HHJ Holmes' judgment in any event³² as HHJ Holmes' order was based on the conclusion that the Whites had succeeded in establishing Mr Bright had been in adverse possession, while Michael Green J's order reflected the complete opposite conclusion.³³ Michael Green J's conclusion on the adverse possession aspect was, said Nugee LJ, "unchallengeable."³⁴ The result was that the Whites could not now challenge either the conclusion that Mr Bright did not acquire title by adverse possession nor that the register did not contain a mistake given that the grounds of appeal to the Court of Appeal were so circumscribed.³⁵

In summary, while it had been wrong for Michael Green J to allow the Amirtharajas to run the paper title point on appeal, this did not alter the ultimate outcome. Crucially, the reason Michael Green J had allowed the appeal from HHJ Holmes' judgment was that the acts relied upon by the Whites to establish Mr Bright's adverse possession were "equivocal" and, for this reason, fell short of proving the necessary intention to possess the passageway. This conclusion was quite separate from and not dependent on whether the Amirtharajas' new paper title argument ought to have been permitted.³⁶

The Whites' appeal was therefore dismissed.

Adverse possession, relativity of title and a salutary lesson for appellants

What, then, is the significance of the *White v Amirtharaja* litigation? The importance of the case can be seen as unfolding on two principal fronts: one, as a matter of legal principle elucidating the law of adverse possession and relativity of title; the other in highlighting the more practical implications for appellate court practice, or more precisely, litigation strategy.

On the matter of legal principle, the *White* litigation offers a further, and welcome, exposition and rehearsal of the foundational principles of adverse possession as espoused in *Powell, Moran* and *Pye* and of broader issues surrounding relativity of title. It clarifies the need to consider quite separately (as was not done clearly in the County Court judgment) the question of factual possession and, subsequently (if connectedly) intention to possess. Moreover, *White* offers an example of adverse possession as it applies in a somewhat unique and challenging factual nexus involving a narrow passageway between two properties, as opposed to the now commonly anticipated adverse possession contexts of cattle-grazing,

³² *White v Amirtharaja* [2022] EWCA Civ 11 at [78].

³³ *White v Amirtharaja* [2022] EWCA Civ 11 at [79].

³⁴ *Ibid.*

³⁵ *White v Amirtharaja* [2022] EWCA Civ 11 at [82].

³⁶ *White v Amirtharaja* [2022] EWCA Civ 11 at [76].

fence-enclosed farmland or other scrub or marshland as witnessed in other key cases in the area. The case gives us further insight into how the court will approach adverse possession claims that rub up against questions of rights of way and the dividing line between accepting a user of *access* as opposed to a finding of *possession*. In short, where there is an extant right of way (or other easement operating), even where a locked gate (or other enclosure) is used, controlling access to the land to the exclusion of the landowner may not be enough to demonstrate intention to possess. The case therefore offers an important reminder that enclosure of land by a squatter/trespasser may be referable to the protection of a pre-existing right (e.g., a right of way) rather than reflecting evidence of possession or intention to possess and, for this reason, an adverse possession claim may fail. Thus, despite the evidential power of an adverse possessor's enclosure of land, as underscored in cases such as *Seddon v Smith* (1877),³⁷ even the most physical, tangible acts of apparent control such as installation of a locked gate, may fall short of demonstrating the requisite *animus possidendi*.

Beyond this, and more particularly, the *White* litigation confirms what might be called the 'equivocality principle' in the law of adverse possession and solidifies its place as an established and accepted aspect of the law. The discussion of Mr Bright's 'equivocal' acts falling short of demonstrating the requisite intention to possess are a crucial reminder of the, perhaps, higher threshold for satisfying the elements of an adverse possession claim than is first perceived. Michael Green J returned to key cases establishing the equivocality principle including dicta from Slade J in *Powell* drawing on *Littledale v Liverpool College*³⁸ to underscore the insufficiency of equivocal acts in evidencing a trespasser's intent to exclude the true owner. Even the clearest examples of enclosure (often regarded as the strongest evidence of factual possession and intention to possess) may be regarded as equivocal and fall short of establishing adverse possession. Michael Green J cited Slade J³⁹ who himself referenced Sachs LJ in *Tecbuild Ltd v Chamberlain*:

"As regards adverse possession ... it is of no use relying only on acts which are equivocal as regards intent to exclude the true owner ... even all-round fencing [as in *George Wimpey & Co. Ltd.*] is not unequivocal if other explanations exist as to why it may well have been placed round the land in question, as, for instance, to protect the ground from incursions of others."⁴⁰

³⁷ *Seddon v. Smith* (1877) 36 L.T. 168 in which Cockburn C.J. noted at 169: "Enclosure is the strongest possible evidence of adverse possession;" see also *George Wimpey & Co. Ltd. v. Sohn* [1967] Ch. 487 at 511A per Russell LJ.

³⁸ *Littledale v. Liverpool College* [1900] 1 Ch 19, 23.

³⁹ *Powell*, 476, per Slade J noted that 'equivocality' meant user that 'did not necessarily ... betoken an intention on his part to claim the land as his own' cited with approval in *Pye*.

⁴⁰ *Tecbuild Ltd v Chamberlain* (1969) 20 P&CR 633.

Drawing a close analogy with the case of *Littledale*, Michael Green J explained that the erection and locking of a gate at the end of an accessway 'can be an equivocal act and not have been done with the intention of excluding the owner.'⁴¹ *White* therefore affirms that the equivocality principle remains alive and well and that *Littledale* (at least on this point) remains good law. In *Littledale*, the trial judge held that locked gates (which had been there for more than 12 years) amounted to equivocal acts and could have been installed to protect the plaintiffs' right of way from being invaded or interfered with, for example, by the public and nothing more. The adverse possession action was therefore dismissed.⁴² This was precisely the conclusion Michael Green J reached as to Mr Bright's use of the passageway and erection of locked gate at the entrance to the access road. Thus, *White* serves as a timely reminder of the equivocality principle, that proving factual possession as well as intention to possess is not to be too-easily achieved or under-estimated and that enclosure of land by way of fencing, gates, and locks, will not of itself alone be sufficient to signal adverse possession without close examination as to precisely the circumstances in which that enclosure was deployed and, more precisely, for what purpose. Where, as here, the purpose was deemed to be securing use of the right of way, this will not cross the threshold for betokening an intention to exclude the world at large including true owner so as to demonstrate the requisite animus possidendi.⁴³

Beyond this, and more generally, Nugee LJ in the Court of Appeal offered a helpful examination and restatement of several, further aspects of the law of adverse possession and relativity of title in what he himself described as a "slightly elaborate detour."⁴⁴ Nugee LJ reflected on the meaning of the term 'paper title'. Rare as it is increasingly becoming, the passageway at the centre of the dispute in *White* had been unregistered land until first registration in 2005. This meant that the relevant principles of adverse possession (in terms of limitation periods) were those pertaining to unregistered land – hence, the need for the Whites to be able to point to at least 12 years' adverse possession by Mr Bright.

As Nugee LJ reiterated, in unregistered land, an owner who wishes to prove their title must show "an unbroken chain of title ending with ... themselves".⁴⁵ It is, of course, well-known to readers, that since the Law of Property Act 1969, a good root of title of at least 15 years must be indicated to amount to 'good title.' Nugee LJ continued: "In the vast majority of cases ... a person with a paper title in this sense will be the owner of land and vice-versa. So it is not uncommon to see the expressions 'paper title', 'paper owner', 'true owner' and the like used

⁴¹ *Amirtharaja v White* [2021] at [55]

⁴² A result upheld by the Court of Appeal.

⁴³ See also the case of *King & Blair v The Incumbent of Newburn* [2019] UKUT 176 (LC) where the issue of equivocality was also in play in a case concerning an old and long-closed (and locked-up) church.

⁴⁴ *White v Amirtharaja* [2022] EWCA Civ 11 at [59].

⁴⁵ *White v Amirtharaja* [2022] EWCA Civ 11 at [53].

interchangeably.”⁴⁶ Nugee LJ explained that the ‘usual contest’ in adverse possession claims was between the ‘paper owner’ and the adverse possessor or squatter and that:

“Two things follow from this analysis. First, if O [original owner] has a paper title, he will have a better right to the land than S [the squatter], and be able to recover the land from S unless and until S has barred O's title by sufficiently long adverse possession. Second, just as S can recover possession from T, O does not need a paper title to have a better right to the land than S. All he needs is to have formerly been in possession himself.”⁴⁷

Of course, this is well-trammelled territory and, in that sense, nothing particularly new but it is noteworthy that, in this case, it was this discussion which laid the groundwork for the Court of Appeal’s conclusion that, once these two points were accepted, it consequently became clear that it was “neither necessary nor sufficient for the Amirtharajas to establish that the James brothers had a paper title to the passageway.”⁴⁸ It became a moot point as, even if the Amirtharajas had established the James brothers’ paper title to the passageway, this could have been defeated by the Whites’ proving that Mr Bright had been in adverse possession for at least 12 years – which ultimately they failed to do. Put simply, Nugee LJ’s “elaborate detour” proves a helpful exercise in rehearsing and revisiting the significant principle of relativity of title so foundational to our land law which echoes even today.

Finally, and perhaps the most significant lesson of the *White* litigation is a practical one, namely a salutary lesson on litigation strategy. Thus, while the case, in particular in the Court of Appeal, was decided on very narrow grounds, this itself proves instructive in highlighting the limitations of the appellate jurisdiction, the potential for unfairness in the operation of the test for permission on a second appeal and the ramifications for clients and counsel when appeal grounds are so circumscribed. One can read in the Court of Appeal judgment Nugee LJ’s manifest sympathy for the position of the Whites and their claim that it was a mistake for the James brothers to have been registered on first registration with possessory title of the passageway when they were evidently not in actual possession of the land at the time. However, Nugee LJ was necessarily constrained by the scope of the appeal and was ultimately powerless to allow re-opening of this issue, permission having been refused by Asplin LJ to advance this ground of appeal as it was held not to raise a point of public importance. Thus, Nugee LJ made plain that, even in the event that the Whites had succeeded on their single ground of appeal on the paper title point in the Court of Appeal, they would still have lost on the essential, core question of being able to establish the requisite elements of proving adverse possession over the passageway, given how the litigation had played out in the lower courts and the limited nature of the second appeal. Legal practitioners might well take note of the significance of this when considering whether or not to pursue an appeal and how

⁴⁶ *White v Amirtharaja* [2022] EWCA Civ 11 at [55].

⁴⁷ *White v Amirtharaja* [2022] EWCA Civ 11 at [57].

⁴⁸ *White v Amirtharaja* [2022] EWCA Civ 11 at [58].

grounds of appeal might be drafted. A robust and rigorous analysis of the judgments of the lower courts is surely always necessary to avoid the time, effort and cost of building and arguing an appeal if the efforts will not repay the spoils. A victory on a very narrow appeal would appear to be hollow if the broader, substantive case is already lost and cannot be re-opened.

Taken together, the *White* litigation offers keen insights into the equivocality principle in the law of adverse possession, and additionally, a practical reminder, if one was needed, of the perils of the appellate court, the permission process and of the tactics and pitfalls of legal practice.