

COMMONS ACT 2006 section 19

The Commons Registration (England) Regulations 2014 No.3038

Application to correct the register on the basis of a mistake by the Commons Registration Authority in registering a transfer of a common right to a limited company - CL 65 Burnham Norton, Burnham Overy and Brancaster

FINAL DECISION

The application, dated 1 June 2015 was made to Norfolk County Council as the relevant Commons Registration Authority (CRA), on the prescribed form CA 10 under the Commons Act 2006, section 19, by Mr Peter Connor, who is also a Common Right Holder. The application relates to the CRA's decision to register the transfer, in March 2015, of a quarter undivided share from Clive Laurence Houlder to East Coast Sporting Limited. It quotes common right entry 328 which, following the registration of the transfer is now owned in undivided shares by Kim Marion Lake, Marcus James Townsend, Wild Spaces Fund Limited and East Coast Sporting Limited. Mr Connor has made this application because he does not agree with the CRA's decision to register the transfer to East Coast Sporting Ltd and wants "entry 328 removed from the register". Mr Connor has asserted that the CRA has misunderstood the law by allowing the registration of the transfer of the right to a limited company.

Section 19 of the Commons Act 2006 allows applications to correct certain errors in the registers. Section 19(2) sets out the purposes for which a correction can be made.

Section 19 reads as follows:-

19. Correction

(1) A commons registration authority may amend its register of common land or town or village greens for any purpose referred to in subsection (2)

(2) Those purposes are -

(a) correcting a mistake made by the commons registration authority in making or amending an entry in the register;

(b) correcting any other mistake, where the amendment would not affect -

(i) the extent of any land registered as common land or as a town or village green: or

(ii) what can be done by virtue of a right of common

(c) removing a duplicate entry from the register;

(d) updating the details of any name or address referred to in an entry

(e) updating any entry in the register relating to land registered as common land or as a town or village green to take account of accretion or diluvion

(3) References in this section to a mistake include -

(a) a mistaken omission, and

(b) an unclear or ambiguous description

and it is immaterial for the purposes of this section whether a mistake was made before or after the commencement of this section.

(4) An amendment may be made by a commons registration authority

(a) on its own initiative (NB this power is not yet in force in Norfolk)

(b) on the application of any person.

(5) A mistake in a register may not be corrected under this section if the authority considers that, by reason of reliance reasonably placed on the register by any person or for any other reason, it would in all the circumstances be unfair to do so

Taking this test into account, was a mistake made by the Commons Registration Authority (CRA), as stated by Mr Connor in his application for the correction of the register under section 19? Was the registration of the transfer from Clive Laurence Holder to East Coast Sporting Limited of the undivided share of the common right a mistake on the basis that a company is not able to own a common right in gross as it is a fluctuating body of persons?

The case for the correction is based on the following grounds (from statements on the application form and comments in later correspondence)

- 1) That the CRA relied on section 34 of the Law of Property Act 1925 to allow companies to be rights holders.
- 2) A right of common is not a property in the terms of that Act, it is an interest in someone else's property.
- 3) Rights of common are incorporeal
- 4) A common right is a legal interest held by the registered right holder and is not an estate in land
- 5) Commons rights are not personal property and are held as interests and are not covered by section 34 of the Law of Property Act 1925
- 6) A right of common in gross has to be held in a man's name

- 7) In the law of Commons generally corporations are large local authorities (Councils) and not companies and East Coast Sporting Ltd cannot use being a corporation to claim a right of common in gross.
- 8) A right of common for a fluctuating body of persons (i.e. local inhabitants) is not recognised in law. A company is a fluctuating body of persons and is unable to own property.

Taking the points in the order in which they appear above, the CRA relies on the rule contained in the Law of Property Act 1925 which allows the registration of up to four persons as owners of a right of common in gross. The term 'person' in this context includes 'a body of persons corporate or unincorporate' – in other words, a company. Section 34(3) of that Act states there cannot be more than four legal joint tenants of property. It is possible for one common right to be owned by two or more persons as joint tenants on the terms prescribed by that Act. The owner of a right of common in gross is entitled to take a reasonable share of the product of the common but it should be remembered that that one right is indivisible. To conclude this point, under section 34 of the Law of Property Act 1925 no more than 4 persons can be registered as the owner of one right. The right is indivisible but it is possible for one right to be owned by two or more persons as joint tenants on the terms prescribed by the Law of Property Act 1925.

Turning now to points 2, 3, 4, 5 and 6, a right of common in gross is an incorporeal hereditament and may only be conveyed or transferred by deed.

Gadsden on Commons and Greens (second edition 2012) states "Common in gross: The definitive explanation of a common in gross is usually to be considered that of Blackstone; "Common in gross or at large is such as is neither appendant nor appurtenant to land but is annexed to a man's person; being granted to him and his heirs by deed; or it may be claimed by prescriptive rights, as by parson of a church or the like corporation sole"

The phrase 'a man's person' has been used by Mr Connor to support his statement that such a right cannot be owned by a company. From what has been said above it can be seen that that interpretation is incorrect.

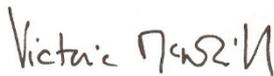
The class of ownership of the right can be treated as being a legal, rather than a beneficial ownership and it is because of this that there cannot be more than four legal joint tenants registered as owners.

Point 7 refers to Mr Connor's belief that corporations are largely local authorities. This could stem from the remarks made by East Coast Sporting Limited when advising that it was a corporation rather than a fluctuating body of persons. Mr Connor may also be mistakenly referring to the remarks of the Commons Commissioner in his decision in Section 11 on page 121 where he stated that a "customary right of common for a fluctuating body of persons is not recognised by the law *except* (my emphasis) in special circumstances namelyin the case of a grant to a corporation on trust for the fluctuating body".

Point 8 is an extension of point 7 above but it is agreed that a right of common for a fluctuating body of persons (i.e. local inhabitants) is not recognised in law. A company is not however a fluctuating body of persons. It is a legally recognised entity, capable of acquiring and holding property in joint tenancy in the same manner as if it were an individual. A company exists or 'stands alone' from its directors or shareholders, which can and do change. Companies are generally registered at Companies House. East Coast Sporting Limited is such a registered Company. It is a 'body corporate' independent of its directors and shareholders

For these reasons the answer to the question posed at the start of this decision notice is that a mistake was not made by the Commons Registration Authority by registering this transfer. The requirements of Section 19 have not been satisfied as it has not been shown that a mistake was made by the Commons Registration Authority when registering the transfer of the undivided share of the common right to East Coast Sporting Limited. In any event, if a mistake had been evidenced it would still not be possible to grant the application because of the operation of section 19(5) of the Commons Act 2006.

The application is refused



Victoria McNeill,
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Norfolk County Council

Date 18 December 2015