



This Registers Update explains the registration implications that arise from the recent decision of the Outer House of the Court of Session in the case of *The Board of Management of Aberdeen College v. Stewart Watt Youngson and Another* [2005] CSOH 31

UPDATE: 15

General

A disposition *a non domino* is a disposition of property granted by a party who has no title to it. The *a non domino* facility is a recognised and legitimate device for making good a lack of title which cannot otherwise be made good.

For a disposition to found a basis for positive prescription in the General Register of Sasines in terms of section 1 of the Prescription and Limitation (Scotland) Act 1973, the deed must be valid *ex facie*.

The question in *The Board of Management of Aberdeen College v. Stewart Watt Youngson and Another* was whether a disposition granted by a disponent in favour of himself in the same status or capacity (i.e. A to A), could be a valid foundation writ. The court determined that such a disposition was not sufficient in its terms to constitute a title to the interest in the subjects purportedly transferred, and that it was invalid *ex facie*. Such a deed could not be a foundation writ for the purposes of positive prescription in terms of the 1973 Act.

The judgement affects the way in which *a non domino* deeds are dealt with in the two property registers, which are the General Register of Sasines and the Land Register.

A *non domino* Applications to the General Register of Sasines and the Land Register

In order to ensure a consistent approach in both property registers the Keeper will not accept dispositions *a non domino* by A to A for recording in the General Register of Sasines or for applications for registration in the Land Register where the disposition *a non domino* is the deed inducing registration.

First Registrations - Prior recorded disposition *a non domino* in progress of titles

There may be instances where a disposition *a non domino* by A to A already recorded in the General Register of Sasines may form part of the progress of titles in an application for first registration in the Land Register.



Since a disposition *a non domino* by a granter in favour of himself in the same capacity is not a valid disposition to found prescription in terms of section 1 of the 1979 Act, possession on such a deed cannot render the title unchallengeable.

In examining the application for first registration, the Keeper's staff will consider whether positive prescription has operated on a *subsequent* deed in the prescriptive progress of titles. In the situation where a period of ten years has elapsed since the recording of the subsequent deed, and the application for registration contains satisfactory evidence, which demonstrates that possession has been exercised openly, peaceably and without judicial interruption, then the title will be registered without exclusion of indemnity. However if the period of positive prescription has yet to pass then an exclusion of indemnity is inevitable in respect of the proprietorship of the interest being registered.



