

JERSEY / JUDGMENT

Comprop v Moran [2002] UR 220A (21 November 2002)

[2002] UR 220A

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court OF APPEAL st November, 2002 . Before: R. C. Southwell, Esq., Q. C., Single Judge. Between Comprop Limited (formerly known as Channel Islands Communications (Television) Limited.) First Plaintiff/FIRST RESPONDENT Perry's Limited Second Plaintiff/SECOND RESPONDENT And David Moran (trading as Adsell) Defendant/APPELLANT IN THE MATTER OF An appeal by the Defendant/APPELLANT from the Interlocutory Order of the Royal Court of 23 rd November, 2001, refusing the Defendant/APPELLANT leave to adduce expert evidence; and an appeal by the Defendant/APPELLANT from so much of the Judgment of the Royal Court of 20 th March, 2002, as found that: (i) the copyright in Mr. Perry's map was infringed by the Defendant/APPELLANT making his Wall, Wayfinder, and Handy maps in 1996 and 1997; and (ii) the First Plaintiff/FIRST RESPONDENT was the equitable owner of the copyright in Perry's map and that the legal title remained vested in Mr. Perry but that, under normal principles, although the First Plaintiff/FIRST RESPONDENT's equitable title was sufficient to enable it to start the proceedings, it was not entitled to final Judgment until it joined Mr. Perry or got in the legal title. Application by the Defendant/APPELLANT and by the Plaintiff/RESPONDENT for a Consent Order that the notice of appeal filed on 26th April, 2002, be stayed for a period of 6 months from the date of the making of such Order. Advocate S. J. Young for the Plaintiffs/RESPONDENTS. Advocate J. Bell and Advocate A. P. Begg for the Defendant/APPELLANT.

judgment

SOUTHWELL JA: This Action and the Appeal 1. The claim in this action relates to alleged infringement of copyright in maps. The events to which it relates took place from 1996 onwards. The action was started on 5th September 1997 when the Court granted ex parte interim injunctions against the defendant. On 13th June 1998 the ex parte injunctions were lifted by consent. The trial did not take place until November 2001 and January 2002. I have been given no explanation as to why it took so long to bring this action on for trial. From the documents which I have seen it appears that this relatively simple action should have been brought on for trial by the end of 1999. The judgment of the Royal Court (Mr K M Garnett QC Commissioner and Jurats Mr M A Rumfitt and Mr J L Le Breton) was delivered on 20th March 2002. As was indicated at the end of the judgment, the Court had still to hear the parties as to the proper relief and as to costs. That hearing has not yet taken place and no date has been fixed for this hearing. The Acte de Justice

was not prepared until Monday 18th November 2002. It was not in a form which accorded with the conclusions of the Royal Court. Amendments have been made to this document, but it was accepted by Counsel that further amendments are to be made and these are now to be attended to forthwith by agreement between them. 2. The Notice of Appeal was issued on 19th April 2002. Advocate Young has appeared throughout for the Plaintiffs. Advocate Begg appeared for Mr Moran throughout the conduct of the proceedings before the Royal Court despite the fact that he had ceased to be on the Tour de Rôle in November 2000. Advocate Begg prepared and filed the Notice of Appeal. In June and July 2002 legal aid certificates were issued to enable Advocate Bell (in place of Mr Begg) to appear on behalf of Mr Moran not only on the appeal, but also in the remaining proceedings in the Royal Court. It appears that Mr Bell's firm, Mourant, challenged the issue of the legal aid certificate in respect of the remaining proceedings in the Royal Court. As a result that certificate was withdrawn and the remaining proceedings in the Royal Court were returned to Advocate Begg to deal with. The result is that Mr Moran is to be represented by Advocate Begg in respect of the proceedings in the Royal Court, and by Advocate Bell in respect of his appeal in the Court of Appeal. It is plain beyond argument that this is not a satisfactory position, because Mr Moran will be represented by two different Advocates, both of whom will need to liaise with the other, and because the costs of representing Mr Moran will be magnified unnecessarily. Notice was given by the Court of Appeal to Mr Bell and Mr Young that steps were to be taken to deal with the appeal expeditiously. On 22 October 2002 Mr Bell and Mr Young signed a consent to the appeal being stayed for six months, despite the fact that six months had already gone by since the Notice of Appeal was filed. This consent letter was sent to the Court of Appeal on 1 November 2002. The matter was referred to me as a single Judge of the Court of Appeal, and on 21 November 2002 I conducted the hearing attended by Advocates Young, Begg and Bell by video conference link. 3. When the matter came before me on the hearing it became apparent that, apart from the giving of some discovery by Mr Moran, nothing had been done since March 2002 to bring on the hearing of the final matters to be decided by the Royal Court, which I was told would take two days to try. In particular, no steps had been taken to secure a date on which Mr Garnett QC could return to the Island to sit with the same Jurats. Having heard Counsel I directed that the appeal be heard at the sitting of the Court of Appeal in March 2003. The only basis on which this date will be changed will be if it proves impossible to obtain a date for the hearing before Mr Garnett and the Jurats sufficiently in advance of the sitting of the Court of Appeal in March 2003. I directed that representations be made to those responsible for the sittings in the Royal Court in order to obtain the earliest possible date before Mr Garnett and the Jurats. If in the end it proves impossible to have a sufficiently early hearing before the Royal Court, it may be necessary for the matter to be stood out until the May 2003 sitting of the Court of Appeal. That step will not be taken unless it is made apparent to the Court of Appeal that every effort has been taken to bring the matter on for an early hearing. 4. I was addressed by Counsel as to the desirability of standing out this appeal so that further discussions could take place between Counsel with a view to settling this matter. As I pointed out to Counsel, they have had since 20 March 2002 to have any necessary discussions with a view to disposing of the matter, and the best way of ensuring that parties do come to a settlement, if so minded, is to fix early dates for hearings so as to focus their minds more powerfully. 5. I end this part of my judgment with an

expression of my gratitude to Advocates Young, Bell and Begg for having attended before me at an early and possibly inconvenient date. Legal Aid Certificates 6. What has taken place in this matter in relation to the giving of legal aid certificates led me to ask Counsel to make brief submissions about the present system. The present system, as I was told, is this. Legal aid certificates whether in criminal or civil proceedings are given to an advocate on the Tour de Rôle to appear and conduct the proceedings at first instance. Once those are completed, a fresh legal aid certificate is given, if appropriate, but for a different advocate to appear in the appeal proceedings. This is not in my judgment consonant with the proper administration of justice, or the interests of the party represented except in rare cases. It means that there is a change of representation at the most important moment, when the advocate who has appeared at first instance is best placed to be able to formulate grounds of appeal on behalf of his or her client. It means that in most cases it is necessary for the new advocate to obtain at the expense of the Island a complete transcript of the proceedings at first instance, so that the new advocate can decide whether there are arguable grounds of appeal and how they are to be formulated. This adds considerably to the expense which falls upon the public in Jersey. So far as the legally aided litigant in civil proceedings or defendant in criminal proceedings is concerned, it means that he or she loses his or her representation, at a vital moment, so that a new advocate has to take the time, effort and expense of reading him or herself into the case so as to arrive at a sufficient understanding of the issues, a course which would be unnecessary if the existing advocate continued to deal with the appeal. The bringing in of a new advocate means that a greater length of time, effort and money is involved in getting the new advocate up to speed. There will naturally be exceptional cases where a change of advocate is appropriate, for example, where the litigant or defendant wishes the change to take place, or wishes the new advocate to consider whether there is a ground of appeal arising out of the inadequate conduct of the proceedings below by the original advocate. But these are exceptional cases. In most cases there is a real advantage both to the litigant or defendant and to the States in having the same advocate continuing to conduct the proceedings (whether civil or criminal) throughout. 7. In the present case it is understandable that Advocate Begg, having continued for more than two years since he came off the Tour de Rôle, might think it appropriate to be relieved of dealing with the appeal in the present case. But in any case, whether or not the advocate remains on the Tour de Rôle, it seems to me that there is much to be said for a change in the system to ensure that the same advocate deals with the case from beginning to end, thereby keeping down any costs incurred by the States and the profession, ensuring that there are no delays in bringing on appeals, and most important, ensuring that the litigant or defendant has the best available representation throughout. I trust that this matter will be considered in relation to the future conduct of the legal aid schemes in Jersey. A copy of this judgment is to be sent to the Bâtonnier and the Acting Bâtonnier. 8. I should make it clear that I express no criticism of Advocates Bell or Begg in this regard, since they have acted in accordance with what has been up till now the normal procedure. No Authorities. Page Last Updated: 28 Aug 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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