

JERSEY / JUDGMENT

De la Haye -v- Corbel [2014]

JRC 140B (08 July 2014)

[2014] JRC 140B

Source: bailii.org · Research copy typeset by Esheria. Not court-issued or certified.

judgment

the master:

Introduction

1. This judgment represents my reasons for granting summary judgment and a declaration in the plaintiffs' favour. 2. In brief the application by the plaintiffs concerns the location of the boundary between the plaintiffs' property previously known as "Braemer" and now known as 'De Montford House', La Route de la Côte, Gorey, St. Martin and the defendants' property known as The Lodge. The relief sought by the plaintiffs 3. The relief sought in paragraph 1 of the plaintiffs' summons is as follows:- "The Master should not, pursuant to Rule 7/1 of the Royal Court Rules (the Rules), grant judgment against the Defendants in the terms of prayers (2) to the Order of Justice on the basis that there is no defence to the Plaintiffs' claim in that the New Wall has been constructed on the Property belonging to the Plaintiffs, alternatively a declaration that the Defendants have constructed the New Wall on the Plaintiffs' property pursuant to which judgment and/or declaration the parties be ordered forthwith to fix a date for a hearing before the Royal Court in relation to prayers (1) ((2)), (3), (4) and (5); insofar as the Master is unable to deal with the same at the hearing of this summons." 4. Prayer 2 of the Order of Justice seeks the following by way of relief:- " an order that the Defendants do forthwith remove the New Wall and any associated footings constructed by them along the length of the Boundary such that any wall and its associated construction intended to separate The Lodge from the Property is set back at least 16 1/2" from the Boundary making good the Property thereafter. " 5. In relation to the plaintiffs' application, at the outset of the hearing, I informed the parties that I could not grant any order which amounted to the granting of injunctive relief. This is because it is only the Royal Court that can grant injunctions under its inherent jurisdiction (see *Walters & Ors v Bingham* [1985-86] JLR 439). A Master does not possess an inherent jurisdiction to grant injunctive relief. The powers of the Master are limited to those vested in him by virtue of the Royal Court Rules 2004 , as amended, (see *Vieira v Kordas*

- [2013] JRC 251) . 6. However, I do consider that I have jurisdiction to grant declaratory relief to define where the boundary between the plaintiffs' property and the defendants' property is located if the relevant summary judgment test is made out. In *Vautier v Manning*
- [2013] JRC 244A , I ruled that I possessed jurisdiction to grant a declaratory judgment on a summary judgment application in relation to a dispute concerning ownership of a field in St. Ouen. I consider it is open to me, if satisfied on the evidence, to exercise that same jurisdiction to determine where the boundary lies between the plaintiffs' and the defendants' properties. 7. If I am so satisfied, the issue of whether the defendants should remove any construction found to have been erected on the plaintiffs' property is a matter for the Royal Court. Likewise, unless the Royal Court orders otherwise or the parties agree, any claim for damages as a result of any construction on the plaintiffs' land is also a matter for the Royal Court. Finally, the plaintiffs did not pursue their application to strike out the defendants' counterclaim which is therefore a matter for trial. Applicable legal principles 8. The test on a summary judgment application is well known and was considered by me in *Corefocus Consulting Limited v Cronk* [2013] JRC 194 . In that case I cited a lengthy extract from *Amy v Amy* [2011] JLR 603 where the Court of Appeal summarised the principles applicable to summary judgment. In relation to this application the relevant part of the extract is as follows:- "In short, the court must consider whether the defendant has shown an arguable defence, i.e. whether there is a triable issue. If so, leave to defend should be given. We would, however, refer specifically to the passage at para. 14/4/5, at 173 which states:- The defendant's affidavit must "condescend upon particulars," and should, so far as possible, deal specifically with the plaintiff's claim and affidavit, and state clearly and concisely what the defence is, and what facts are relied on to support it. As is stated later in the same passage: "Indeed, in all cases, sufficient facts and particulars must be given to show that there is a triable issue." The plaintiffs' evidence 9. The plaintiffs' affidavits were served 10 clear days before the hearing of the plaintiffs' summons. Firstly, an affidavit was sworn by the first plaintiff. Secondly, an affidavit was sworn by a Mr John Sutherland. Mr Sutherland is a director of the company which carried out certain building works at the defendants' property in 2005 described in more detail at paragraph 15 of this judgment. 10. Exhibited to the affidavit of the first plaintiff was a report produced by Mr Derek Clackett, a chartered surveyor. The purpose of this report was to establish the boundary between the western side of the plaintiffs' property and the eastern side of the defendants' property. Previously Mr Clackett had carried surveys of both the plaintiffs' property and the defendants' property. As I describe in more detail below, he was able to use these surveys to set out where he believed the boundary to be located. 11. The starting point for determining the location of the boundary is a contract of sale passed before the Royal Court dated 28 th November, 1959. By this contract a piece of land was sold which in due course became the plaintiffs' property with the then vendor retaining what became the defendants' property. The 1959 contract described the location of three boundary stones between the two properties and lines of demarcation. The line of demarcation relevant to the present dispute is between the third boundary stone and La

Grand Route de la Cote. 12. The defendants purchased their property by a contract passed before the Royal Court dated 26 th October, 2001. There are no material differences in the description of the location of the boundary stones and the line of demarcation contained in this contract and the description contained in the 1959 contract. The description in the 2001 contract is as follows:- LAQUELLE propriété présentement vendue est séparée et délimitée par les côtés de l'Est et du Nord d'avec ladite propriété appelée "Braemar" appartenant à ladite Dlle. Gwynneth Elizabeth Harry, veuve comme dit est, par le moyen de trois bornes plantées comme suit, savoir:- LA PREMIERE est près la carre Nord-Est de ladite propriété présentement vendue, à quatre-vingt-cinq pieds à l'Ouest de certaine borne étant la troisième borne de l'Est décrite dans ledit contrat de Vente héréditaire par ladite Dlle. Elizabeth Jane Williams, veuve de Monsr. David William Price auxdits Sieur Arthur et uxor en date desdits jour et an seize Juillet, mil neuf cent quatre-vingt-deux; LA DEUXIEME se trouve à cent dix-sept pieds neuf pouces au Sud de ladite première et à trois pieds neuf pouces au Nord-Est de la carre Nord-Ouest de certain réservoir en béton et cabinet de toilette formant partie de ladite propriété présentement vendue et qui est près la carre Nord-Ouest de ladite propriété présentement vendue et à vingt-trois pieds au Nord-Ouest de la carre Nord-Est du pignon du Nord de ladite maison formant partie de ladite propriété présentement vendue; LA TROISIEME se trouve à trente-sept pieds trois pouces à l'Est de ladite deuxième, à quinze pieds dix pouces au Nord-Est de ladite carre Nord-Est dudit pignon du Nord de ladite maison formant partie de ladite propriété présentement vendue et à septante-neuf pieds cinq pouces au Nord de la carre Nord-Est dudit garage formant partie de ladite propriété présentement vendue. TOUTES lesdites mesures étant en pieds royaux et prises en lignes droites et toutes lesdites bornes de l'Est et du Nord sont et demeureront mitoyennes entre lesdits Acquéreurs et ladite Dlle. Gwynneth Elizabeth Harry, veuve comme dit est, et ses hoirs ou ayant droit, à fin d'héritage. ET LA LIGNE DE DEMARCATION séparant ladite propriété présentement vendue par le reste dudit côté de l'Est entre ladite troisième borne de l'Est ci-dessus décrite et ladite Grande Route appelée "La Route de la Côte", étant une ligne droite imaginaire tirée à partir de ladite troisième borne ci dessus décrite allant vers le Sud jusqu'à la carre Nord-Est dudit garage formant partie de ladite propriété présentement vendue et continuant sur la mitoyenneté de la côtière de l'Est dudit garage jusqu'à atteindre ladite Grande Route appelée "La Route de la Côte". 13. The plaintiffs purchased their property by a contract passed before the Royal Court dated 7 th December, 2007. There are no material differences between the description contained in this contract, the 1959 contract and the 2001 contract in terms of the description of the location of the boundary stones and the line of demarcation. 14. I observe in passing that it is clear from the 1959 and the 2001 contracts that the eastern wall of the garage was owned jointly. Therefore there is no requirement for either the plaintiffs or the defendants to allow for a relief in relation to this part of the boundary. However, the remainder of the boundary is described by way of a line of demarcation. In relation to this part of the boundary, which runs from the third boundary stone to the north east corner of the former garage, both parties have the benefit of a relief of 16½ imperial inches. 15. What has led to the present difficulty is that, after acquiring their

property in October 2001, the defendants carried out various works in 2005. In particular, the garage forming part of the boundary between the plaintiffs and the defendants' properties in 2001 was replaced. By the time the plaintiffs' acquired their property in 2007, a new garage and wall had been constructed. However the description in the 2007 contract is essentially the same as that contained in the 1959 and 2001 contracts and still referred to the line of demarcation running from the third boundary stone to the north east corner of the garage and then along its eastern wall. It may be that it was not realised that a new garage had been constructed or that the new garage was not necessarily in the same position as the old garage. However the evidence before me does not extend to what the plaintiffs were told about the location of the boundary with the defendants' property. I can therefore only note that the defendants were not party to the 2007 contract in order to agree where the boundary was located. 16. The issue requiring adjudication, as the parties cannot now agree, is the location of the former garage in particular its north east gable and eastern wall. This is because the north east gable and the eastern wall form the line of demarcation between the properties. Once their location is ascertained known it can then be established whether the defendants have constructed their new garage and a wall on the plaintiffs' property and what consequences might follow, if they have. 17. The key evidence upon which the plaintiffs rely is the report of Mr. Clackett dated 27 th June, 2014, exhibited to the affidavit of the first plaintiff. 18. In his report Mr Clackett explained that he had previously been instructed to perform separate surveys in relation to the defendants' property which was conducted in July 2013 and the plaintiffs' property which was conducted in September 2013. Both surveys were conducted using the same equipment which Mr Clackett stated was accurate to plus or minus 3 millimetres. At the time of those surveys, I was informed by the first defendant that Mr Clackett had indicated that any survey carried out by him was not a hundred per cent accurate. 19. However, matters developed because in the course of discovery, the defendants produced a digital rendition of a survey carried out by DJ Hartigan Associates Limited in or about September 2003. A copy of this was provided to Mr Clackett. The Hartigan survey was carried before the defendants demolished the former garage as part of the works I have referred to at paragraph 15 above. The Hartigan survey therefore provided Mr Clackett with a record of the physical position of the former garage, the eastern wall of which is referred to as providing the line of demarcation between the two properties. 20. Mr Clackett was therefore able to match the Hartigan survey with the surveys he had carried out so that the south eastern corner of the defendants' property that the house was located in the same position on both surveys. This enabled him to determine the location of the former garage. 21. In the final paragraph of his report, Mr Clackett states as follows:- "The overlay of the Hartigan survey on top of my survey of the Lodge and De Montford House provides an accurate representation of the position of the north eastern boundary stone of The Lodge and the garage such that an accurate physical line based on those surveys can be produced as to the location of the line of demarcation or boundary as between The Lodge and De Montford House." 22. Mr Clackett was therefore able to identify on a drawing the location of the north east corner of the former garage and its eastern wall and therefore

identify the precise location of the line of demarcation from the third boundary stone to the position where the northeast corner of the former garage was located and then to La Grande Route De La Cote. This was recorded on his drawing no 14/2075/01 produced earlier this month. The Hartigan survey was overlaid onto the survey of the plaintiffs' property previously produced in September 2013 bearing drawing number 13/2044/01. 23. It is further clear from this work that the works carried out on behalf of the defendants in 2005 are to the east of the demarcation line identified by Mr Clackett. This is consistent with a photograph taken by Mr Sutherland in 2005 exhibited to his affidavit which shows construction works to the east of the former garage wall forming the boundary between the plaintiffs' and the defendants' properties. The defendants' position 24. Mr Corbel firstly argued it was not safe to rely on Mr Clackett's readings. However, no evidence was produced by Mr Corbel to explain why this was the case and why the approach taken by Mr Clackett, once he had access to the Hartigan survey produced in 2003, was not the best evidence to show the location of the boundary. The view I have reached therefore is that his statements in that regard are assertions and do not meet the test set out in *Amy v Amy* which I have cited above. In particular the defendants have not sworn any affidavits or adduced any evidence to demonstrate why Mr Clackett's evidence is arguable and why a trial is required. 25. Secondly, in the defendants' answer at paragraph 9, the defendants plead that the plaintiffs acquiesced in the location of the new wall as well as complaining about a wall constructed by the plaintiffs on the new wall erected by the defendants in 2005. 26. The first part of this is allegation is unparticularised and does not contain any detail setting out the basis upon which the plaintiffs acquiesced in the defendants constructing a new wall. The defendants' argument, although as described as acquiescence, as it was explained by the first defendant was effectively that he was relying on a statement made by the plaintiffs that the wall could remain where it was. Assuming such statement was made, although no evidence was filed to this effect, for a court to give legal effect to any such assurance would be to allow the defendants to acquire an interest in land in reliance on a promise. Such an argument is contrary to the remarks of W. J. Bailhache, Deputy Bailiff in *Flynn v Reid*

[2012] 1 JLR 370 where he stated at paragraph 50:- "We do not think that the doctrine of proprietary estoppel forms part of Jersey law if its effect is to create an equitable interest in land that exists in parallel with the legal interest which, as we understood it, was the bedrock of the plaintiff's claim." The defendants' assertion of acquiescence cannot therefore form a defence to the plaintiffs' claim. 27. If I am wrong in this conclusion, in any event, I do not consider there is any basis to assert an estoppel which requires a trial. The works the defendants carried out to their property were completed before the plaintiffs acquired their property. It is not therefore a case of the plaintiffs having given the defendants permission to carry out certain works on the plaintiffs' land which the defendants then relied upon and incurred expenditure as a result. There is therefore no issue of the defendants acting to their detriment. The works had been carried out and the encroachment had occurred by the time the plaintiffs acquired their property. Any

statement made could only have been made after the event which cannot give rise to an estoppel. 28. The second part of paragraph 9 of the defendants' answer, complaining about a wall constructed by the plaintiffs on the new wall erected by the defendants in 2005 (which the plaintiffs accept is a matter for trial) can only be premised on an acceptance that part of the works carried out for the defendants are on the plaintiffs' property. It is not therefore a defence to the plaintiffs' claim but rather is a consequential matter following on from the plaintiffs establishing their claim. It is also right to note in relation to this issue that the plaintiffs have in any event undertaken to remove any constructions they have carried out on the wall erected by the defendants to assist the defendants to remove any works carried out on the plaintiffs' property. 29. Mr Corbel further relied on language contained in the 2001 contract when he and the second defendant acquired their property. Mr Corbel argued the works carried out were constructed within a line due south of the third boundary stone and therefore there is no encroachment. 30. I do not consider this gives rise to an arguable issue. I agree with Advocate Young that the description of the line is from the boundary stone (which by convention means the middle of the boundary stone) to the northeast corner of the former garage and then along the middle of the eastern wall. The reference in both the 1959 and the 2001 contract to "Vers le Sud" is simply to indicate the general direction of the line of demarcation. It means no more than towards the south. Its purpose is to locate the general direction of the line of demarcation. It is not right to construe such a reference in any of the contracts I have referred to as requiring a precise cardinal reading or to override the precise description of where the line of demarcation is located, namely between the third boundary stone and the north east gable and then along the centre of the eastern wall of the former garage. I am not therefore persuaded that this is an argument which is sufficient to justify a trial. 31. Finally, Mr Corbel complained that he had relied on professionals and it was unfair that the boundary line should now be construed as being in a different position when he had carried out works to the defendants' property in good faith and in reliance on such professionals. Although the plaintiffs in their evidence indicated that Mr Corbel was involved significantly in where building works were carried out (see paragraph 6 of the affidavit of Mr Sutherland), any potential disagreements between the defendants and those who have advised them in relation to the works carried out are also not a defence to the plaintiffs' claim. In reaching this conclusion, I wish to make it clear I am not forming a view as to whether or not there are such disputes or their merits; rather, if there are any such issues, I am simply expressing the view that they do not amount to a defence to the present application. 32. In relation to each of the grounds advanced by Mr Corbel, I am not therefore satisfied that any of them amount to a defence where I should give leave to defend. I have therefore reached the view that the plaintiffs have satisfied me that there is no defence to their application and therefore I should grant a declaration in their favour. 33. In relation to the precise location of the boundary, Mr Clackett has produced readings at a number of points from the Grande Route de la Côte to the third boundary stone; each reading sets out the distance between the east face of the wall constructed by the defendants or on the plaintiffs' land and the line of demarcation. In respect of the line of

demarcation where the former garage was situated because the former garage wall was 9 inches thick, the extent of the encroachment is increased by 4½ inches or a further 114 millimetres to the figures produced by Mr Clackett. Those readings are recorded in drawing 13/2044/01 which I have referred to at paragraph 22 of this judgment. Mediation 34. While I find in the plaintiffs' favour in relation this matter, it became clear to me during the course of Mr Corbel's submissions, that there are on-going issues between the plaintiffs and the defendants. Accordingly, although I have given judgment in favour of the plaintiffs and have made a declaration as to the location of the boundary line, by virtue of the power vested me by Rule 6/28 of the Royal Court Rules 2004 , as amended, I am exercising that power to stay these proceedings further until 30 th September, 2014, to allow the parties an opportunity to mediate all issues between them. Although the parties have tried to resolve their differences by negotiation through their advisers, such direct negotiations have not succeeded. Yet, there are clearly issues between neighbours which mediation might be able to resolve. Although parties cannot be compelled to mediate, I encourage the parties to do so in the strongest possible terms. If any party that does not wish to mediate, then in relation to any future step taken in these proceedings I wish to make it clear that the court has power to make such costs order as is appropriate, having regard to any unreasonable refusal to participate in mediation. I hope that both parties will therefore make a genuine attempt to try to resolve their differences by agreement rather than engaging in further litigation before the courts. Costs 35. In relation to the costs of the plaintiffs' application, my decision is that costs should be awarded on the standard basis. Although Advocate Young sought costs on the indemnity basis, I am not satisfied that there is sufficient to take this case out of the norm to justify an order for indemnity costs. Although I accept that the defendants' answer denied any encroachment, the position only became clear once the Hartigan survey carried out in 2003 was produced on discovery and was considered by Mr Clackett. I have seen no evidence to show that the defendants knew of this survey and its effect at the time their answer was filed. The defendants have also properly produced this survey even though it did not assist their case which has enabled the court to adjudicate on where the line of demarcation is located for the reasons I have set out in the decision. On balance I am therefore persuaded that the case is one where the plaintiffs should only recover their costs on the standard basis and not on an indemnity basis. 36. While the parties may negotiate about payment of costs and submit bills for taxation, enforcement of any costs order is also stayed until conclusion of the stay to enable the parties to mediate their differences. The process of mediation will not be helped by the plaintiffs seeking to enforce their costs order against the defendants. *Authorities Walters & Ors v Bingham* [1985-86] JLR 439. *Royal Court Rules 2004*. *Vieira v Kordas*

[2013] JRC 251 . *Vautier v Manning*

[2013] JRC 244A . *Corefocus Consulting Limited v Cronk*

[2013] JRC 194 . *Amy v Amy*

[2011] JLR 603 . Flynn v Reid

[2012] (1) JLR 370. Page Last Updated: 23 Sep 2016 BAILII: [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#) | [Donate to BAILII](#)

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bailii.org/je/cases/UR/2014/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/de-la-haye-v-corbel-2014-jrc-140b-08-july-2014>

Prepared on 26 October 2026 · Esheria