

JERSEY / JUDGMENT

Gibbins -v- AG [2012] JRC 001 (03 January 2012)

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JUDGMENT

THE DEPUTY BAILIFF: 1. This is an application by Mr Keith Gibbins for the review of a compensation order pursuant to Article 7 of the Criminal Justice (Compensation Orders)(Jersey) Law 1994 . That Article is in these terms:- "(1) At any time before the person against whom a compensation order has been made has paid to the Viscount the whole of the compensation which the order requires the person to pay, but at a time (disregarding any power of a court to grant leave to appeal out of time) when there is no further possibility of an appeal on which the order could be varied or set aside, the court which made the order may, on the application of the person against whom it was made, discharge or reduce the amount which remains to be paid if it appears to the court - (a) (b) (c) that the person against whom the order was made has suffered a substantial reduction in the person's means which was unexpected at the time when the compensation order was made, and that the person's means seem unlikely to increase for a substantial period.

(2) Where a court varies or discharges a compensation order under this Article it shall discharge or vary to a like extent any default sentence fixed by that order." 2. Now the Court made the compensation order on 21 st August, 2009, when the accused was sentenced on various charges of fraud or other dishonest behaviour. The order was that the accused should pay by way of compensation to Royal and Sun Alliance the sum of £8,334.65; to Barclays Bank the sum of £5,099.63; to Kleinwort Benson the sum of £1,172.73 and the Parish of St Saviour the sum of £4,706.10; that to be paid within a month of the sale of the accused's property or within 12 months of the release from prison whichever be the earlier with a default sentence of 6 months' imprisonment for non payment. 3. Looking at the Crown's summary at the time of the sentencing, the summary indicates that the total compensation figure sought was £19,230.48 in the proportions I have just mentioned and then the summary says this:- "The Crown is aware that the only realisable asset available to Gibbins is the real property which he owns jointly with his wife. However that property has been on the market for some considerable period of time and therefore it seems unarguable that it has been the intentions of Mr and Mrs Gibbins to sell that property. It is the Crown's calculation that were the property to be sold then, after payment of the outstanding mortgage of £430,000, there would be sufficient net equity once divided between Mr Gibbins

and his wife, to enable Gibbins to satisfy any compensation order. Clearly whether Gibbins wishes to utilise the funds to settle the compensation orders sought is entirely a matter for him but there should be a time table within which the compensation payment should be made and a default sentence if the payments are not made." And the Court's judgment imposes the compensation order but does not go into any further detail about it. 4. In relation to the present application the Crown accepts that the threshold is passed, that is to say that there has been a change of circumstances; that change has arisen because the property, which I have referred to, has subsequently been taken by Jersey Home Loans Limited on a dégrèvement, an application in February last year by Mr and Mrs Gibbins for a remise de bien having failed. As a result they do not have the property any longer; Mr Gibbins therefore does not have any entitlement to a share in the equity of that property, and the Court has no doubt that the threshold which is referred to in Article 7(1)(c) of the Compensation Order Law to which I have just referred is passed. It then becomes an issue of discretion as to whether or not the Court should relieve Mr Gibbins of the burden of paying the compensation order. The Court is satisfied that we should do this. There may well be some suspicion about what has actually taken place since his release from prison and we have seen certainly a number of affidavits that have been put before us which are not entirely consistent the one with another. But the Court considers that to require Mr Gibbins to serve the default sentence now would be to punish him for firstly, what might have been the actions of his wife in taking the property off the market, secondly for his own depression on emerging from prison and thirdly, for a drop in the value of house prices in the Island, house prices having dropped. 5. In those circumstances the Court does not think it is right that Mr Gibbins should be required to serve the compensation order default sentence and it is therefore discharged. Authorities Criminal Justice (Compensation Orders)(Jersey) Law 1994. AG-v-Gibbins

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