

JERSEY / JUDGMENT

Haas v Duquemin 8th Aug 2000

[2000] JRC 160A (08 August 2000)

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judgment

the bailiff: 1. On 28th March 2000, the Deputy Judicial Greffier ordered, pursuant to Rule 7/8(1) of Royal Court Rules 1992, as amended, that the proper construction of certain clauses in contracts to which the plaintiff and defendants were party should be determined as preliminary issues of law. The dispute centres upon the rights and duties of the parties in relation to a small parking area (to which I shall refer as "the yard") between their respective properties. The dispute can be more easily understood by reference to a plan which is attached to and forms part of this

judgment.

2. The properties now belonging to the plaintiff and to the defendants were originally part of a large property called Mont au Roux which, together with adjoining buildings, was purchased and later developed by Mr. and Mrs Robin Pallot. It is unnecessary to recount all the transactions, but different parts were at different stages sold off by Mr. and Mrs. Pallot, with the result that there are now several owners living in close proximity to each other. 3. The yard came into existence as a separately identified area of land following the sale by Mr. and Mrs. Pallot of Mont au Roux Cottage and the Barn (formerly Units 3A and 3B) to Mr. Richard Lennard True on 14th December 1990. The relevant part of the contract provided:- "ITEM, une moitié indivise dans ledit bel ou terrain y inclus l'emplacement de certain garage récemment démoli par lesdits Vendeurs sur la partie Sud-Est d'icelui. Ledit bel ou terrain est situé à l'Ouest et au Nord desdites offices principales de ferme formant partie de ladite propriété présentement vendue, (ci-dessus décrite), à l'Est dudit édifice (qui est au Sud desdits passage couvert et aile) formant partie de ladite propriété désignée "Unit One", "Mont au Roux" que se réservent lesdits Vendeurs, et au Sud ou environ de la partie Ouest ou environ de ladite chasse ou avenue aussi formant partie de la dernière-dite propriété". 4. The precise limits of the yard were also described, but they are not relevant for these purposes. The contract went on, however, to make a number of specific provisions in relation to the yard, which I set out below:- "12. QUE nul édifice, bâtiment ou construction quelconque ne sera érigé, placé ou planté sur aucune partie dudit bel ou terrain dont un moitié indivise est présentement vendue, lequel sera utilisé comme un parc de stationnement seulement. 13. QUE ledit Acquéreur aura le droit de stationner, mais pour l'usage seulement d'une unité

d'accommodation dite "one unit of dwelling accommodation" formant partie de ladite propriété présentement vendue, trois voitures privées (anglicisé "private motor cars") maxima sur ledit bel ou terrain dont une moitié indivise est présentement vendue et ce immédiatement à l'Est de la façade Est dudit édifice (au Sud desdits passage couvert et aile) dépendant de ladite maison formant partie de ladite propriété désignée "Unit One" "Mont au Roux" que se réservent lesdits Vendeurs. Pour éviter aucun doute entre lesdites parties à ces présentes, l'expression "private motor car" contenue dans cette présente clause n'inclus pas aucune voiture du genre dit "dormobile", "van" ou aucune voiture employée dans des buts commerciaux. 14. QUE tant à piétons que pour les besoins des susdites trois voitures privées (anglicisé "private motor cars") seulement, ledit Acquéreur aura droit de chemin et passage toutes fois et quantes par sur et à travers ledit bel ou terrain dont une moitié indivise est présentement vendue et ce pour aller et venir de ladite seule unité d'accommodaion dite "one unit of dwelling accommodation" formant partie de ladite propriété présentement vendue qui fera utiliser le susdit droit de stationner lesdites trois voitures privées à ladite chasse ou avenue formant partie de ladite propriété désignée "Unit One" "Mont au Roux" que se réservent lesdits Vendeurs. 15. QUE sujet au droit de stationnement ci-dessus décrit lesdits Vendeurs auront droit de chemin et passage toutes fois et quantes et à tous usages à travers ledit bel ou terrain dont une moitié indivise est présentement vendue et ce afin d'aller et venir d'aucune partie de ladite propriété désignée "Unit One" "Mont au Roux" qu'ils se réservent à une autre partie d'icelle. 16. QUE les frais des réparation, maintien et entretien dudit terrain ou bel dont une moitié indivise est présentement vendue seront payés, à savoir:- une cinquième part d'iceux par lesdits Vendeurs comme propriétaires de ladite propriété désignée "Unit One" "Mont au Roux" et l'autre quatre-cinquièmes part d'iceux par ledit Acquéreur comme propriétaire de ladite seule unité d'accommodation dite "one unit of dwelling accommodation" formant partie de ladite propriété présentement vendue qui fera utiliser le susdit droit de stationner lesdites trois voitures privées." 5. On 11th December, 1992, Mr. True sold Mont au Roux Cottage (formerly Unit 3A) to the plaintiff (described in that contract as the former wife of Mr. Michael Fearnley). There was included in that sale the undivided half share in the yard. The clauses to which I have just referred were re-produced so as to confer on the plaintiff the same rights and obligations towards Mr. and Mrs. Pallot and a Mr. Scholefield (who had by then purchased another part of the Pallot property to the West of the yard). On 28th August 1998, Mr. and Mrs. Pallot sold the Dower House (formerly Unit 1) to the defendants, together with an undivided half share in the yard. Again, subject to a minor error which is not material, the same rights and obligations towards the plaintiff were imposed by clauses in substantially identical terms. 6. The plaintiff claims that these clauses confer upon her the exclusive right to use the yard for the parking of motor-cars. Miss Roscouet, who appeared for the plaintiff, agreed that, if this assertion were right, the defendants had an obligation to pay one-fifth of the cost of maintaining the yard but had no rights over it other than a right of way on foot, which was of no practical use to them. Counsel conceded that this might not seem fair, but it was the proper construction of the contract. Counsel argued that because a right to use the yard for parking was conferred expressly on the plaintiff but not on the defendants, it was a

necessary implication that the defendants had no such right. 7. Mr. Duquemin, who argued the case on his own behalf with great competence, submitted that the fundamental principle was that a man must be allowed to do what he likes with his property, subject, of course, to any restrictions which have been imposed. In this case, he argued, the defendants were obliged to respect the plaintiff's right to park three cars on the yard, but that did not prevent them from parking their own car there as well. 8. The Court has visited the site in order to obtain a clearer understanding of the locus in quo. I am sitting to determine a preliminary point of law and I must obviously make no findings of fact. I can, however, state that it seems to me plainly arguable that more than three cars could be parked on the yard, albeit perhaps with less convenience. 9. What, then, are the legal rights and obligations of the parties? I begin by accepting the contention of Mr. Duquemin as to the nature of rights of property. This finds support in De Ferrière's Dictionnaire de Droit et de Pratique, Paris 1771, Tome 2, page 455 which defines "propriété" as "le droit de jouir et de disposer à notre volonté de ce qui nous appartient, en tant que la loi n'y met point d'obstacle ". The same learned professor defines "indivis " (op.cit. at page 22) as follows:- " Jouir par indivis n'est autre chose que jouir d'une même chose, non séparée entre les copropriétaires, qui la possèdent en commun, chacun pour leur part et portion". 10. The yard is owned en indivis by the plaintiff and by the defendants. They are both entitled to the full use and enjoyment of it to the extent that they are not legally inhibited from so doing. I observe in passing that the clauses conferring rights of way are otiose. What then are the legal inhibitions? Firstly, they may not erect or place upon it any form of building or construction whatsoever. Secondly, they are entitled to use it only as a parking area (" parc de stationnement "). Thirdly, the plaintiff has the right, and the defendants have a duty to permit the plaintiff, to park three private motor cars immediately to the east of the western-most wall of the yard. I translate very freely, and simplify, but that is the effect of Clause 13 cited above. 11. Subject to those inhibitions, the parties are both entitled to use the yard as a parking area. I am conscious that this conclusion does not, regrettably, necessarily bring to an end the dispute between the parties. Careless conveyancing has resulted in a state of affairs where, unless goodwill can be re-established, and some compromise effected, both parties have rights which may result in continuing conflict. For the avoidance of doubt, it is not the case that the plaintiff has the right to park three cars and the defendants have the right to park one car. The residual right to use the yard for parking is shared by both co-owners. It may be that there is space for two additional small motor vehicles. If not, any surplus space on the yard which is not reasonably required to facilitate the parking by the plaintiff of three private motor cars must be shared equitably. I express the hope that some mutually acceptable modus vivendi will be found or that a sensible means of severing the co-ownership can be negotiated. 12. It follows from the conclusion at which I have arrived that the interim injunction imposed by the then Deputy Bailiff on 25th June 1999 must be set aside. Authorities Representation of LF. Morgan, Ltd. (1987-88) JLR 336. Pothier; Oeuvres Complètes (Nouvelle Edition) (Paris, 1821):Tome 1: pp.82-94: Traité des Obligations. De Ferrière: Dictionnaire de Droit et de Pratique (Nouvelle Edition)(Paris, 1771): Indivis; Propriété. Arbaugh-v-Leyland

(1967) JJ 745 . Domat: Les Loix Civiles (Nouvelle Edition, revue et corrigée) (Paris, 1723): Titre 12: section 1: des Servitudes: pp.113-121. Ibid: Tome 1: Livre 2: pp.160, 169-171. Page Last
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