

JERSEY / JUDGMENT

P -v- O (Matrimonial) [2016]

JCA 225 (06 December 2016)

[2016] JCA 225

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Court of Appeal (Samedi) 6 December 2016 Before : Sir Michael Birt, sitting as a Single Judge
Between P Appellant And O Respondent The Appellant appeared on his own behalf. Advocate M.
R. Godden for the Respondent.

judgment

birt ja: 1. This judgment follows on from the judgment dated 22 nd November, 2016, P-v-O
(Matrimonial)

[2016] JCA 216 and expressions defined in that judgment have the same meaning were used in this judgment. 2. The Appellant now renews his application for an order that the estate agents instructed in connection with the sale of the property should provide certain information which he says is necessary for his appeal. Having rejected his earlier application in the judgment of 22 nd November, I was initially minded to think that any such renewed application should be referred to the plenary court. However, I am anxious that the appeal should be heard at the earliest opportunity and not be delayed by further interlocutory applications. Furthermore, the Appellant has produced more detailed and focussed information and submissions in support of the renewed application. Accordingly I decided to convene an oral hearing at which both parties would have the opportunity of presenting their submissions. I am grateful to them for attending at short notice. In the circumstances I decided it would be best to consider the matter further as a single judge.

Background

3. The background is set out in the judgment of 22 nd November and I do not repeat it. In short, the Appellant is appealing against the refusal of the Royal Court to allow his appeal against the decision of the Registrar dated 15 th December, 2015. The Registrar's decision was that the property, being the former matrimonial home, should be re-marketed at a price of £799,000 but that any offer in excess of or equal to £765,000 should be accepted by the parties. No appeal is brought against that part of the order and indeed the property has since been sold for £770,000. 4. Paragraph 2 of the order of the Registrar ordered that a number of payments should be made out of the Appellant's share of the sale proceeds of the property. In essence, this was to reflect the view of the Registrar that the Appellant's letter of 26 th

November, 2015, (when he revoked his agreement to a sale of £765,000 and said that the property should be re-marketed at £799,000) had effectively caused the loss of the agreed purchase at that price because the purchasers had withdrawn on 11 th December, 2015. The orders at paragraph 2 were clearly intended by the Registrar to compensate the Respondent for the fact that she would continue to have to make or contribute to various payments (eg continuing interest on the mortgages) which would not have been incurred had the sale proceeded at that time. 5. As best I understand it, the key submission of the Appellant in his appeal will be that, given the price for which the property was eventually sold and the date of completion (8 th July, 2016), the Registrar's orders have resulted in over compensation of the Respondent ie that the extra expenses that she has incurred as a result of the loss of the original purchase in December 2015 are not as great as the amounts which result from the Registrar's order at paragraph 2. Furthermore, he submits the real cause of the loss of the purchase was the caveat entered by Benest and Syvret rather than his decision on 26 th November to revoke his agreement to the sale at £765,000. 6. Against that background he seeks two types of information from the agents:- (i) In relation to Thompsons Estate Agents, who were the agents instructed at the time of the proposed purchase in November/ December 2015, he seeks the information listed at paragraph 17 of the judgment of 22 nd November which, for ease of reference, I repeat as follows:- "(i) written and electronic mail correspondence between the relevant agent and the prospective purchasers of the property; (ii) written and electronic mail correspondence between the Respondent and Thompsons; (iii) file notes recorded by Thompsons in relation to the property arising from telephone conversations, meetings and internal discussions." (ii) Gaudin and Co (" Gaudins ") were not instructed until April 2016. According to Advocate Godden, an offer of £770,000 for the property was made on 27 th May and was communicated to the Appellant. He failed or refused to communicate with Gaudins and as a result the Respondent had to issue a summons before the Royal Court seeking an order that the Viscount be authorised to pass contract on his behalf. This came before the Royal Court on 28 th June and the Royal Court granted the order. Completion of the sale took place on 8 th July. The Appellant seeks information from Gaudins about the date of the offer and when it was accepted. (i) Information from Thompsons 7. I take first the application for disclosure of information by Thompsons. In the course of the hearing, I pressed the appellant as to the relevance of this information. How did it assist in connection with his appeal? The Appellant responded that, having now received information in support of the Respondent's application for taxation of earlier costs orders, it was apparent to him how frequently Le Gallais and Luce (the Respondent's advocates) were in touch with Thompsons in the period immediately prior to the hearing before the Registrar on 15 th December, 2015. He highlighted that there were five telephone conversations between someone at Le Gallais and Luce and Mrs Sokrati of Thompsons between 30 th November and 10 th December, one email on 10 th December and a meeting on 11 th December. He submits that this shows that Le Gallais and Luce were coaching Mrs Sokrati about the evidence which she would give before the Registrar. He therefore wishes to see all the information listed at para 6 above in order to see whether this was so. 8. I reject this application without hesitation. There is no evidence whatsoever to

support the suggestion that Le Gallais and Luce were seeking to coach Mrs Sokrati as to her evidence or that Mrs Sokrati was willing to give anything other than her genuine opinion when giving evidence. It is a classic example of a fishing expedition. It is not in the least surprising that there was regular contact between Le Gallais and Luce and Thompsons at this time. One has to recall that there was an agreed sale which had been effected through Thompsons but that this sale had run into difficulties because of the caveat issued by Benest and Syvret and because of the decision of the Appellant by his letter dated 26 th November to revoke his agreement to the sale. It is therefore hardly surprising that Le Gallais and Luce were in regular contact with the agents to discuss the developing position and that they had also been in touch to see if Mrs Sokrati would be willing to give evidence in support of the urgent application which was brought before the Registrar on 15 th December. 9. Quite apart from there being no proper grounds to support the suspicion which the Appellant apparently holds, I cannot see the relevance of any contacts between Le Gallais and Luce and/or the Respondent with Thompsons. The fact is that the Appellant withdrew his agreement to the sale at £765,000 by letter dated 26 th November, that the purchasers withdrew on 11 th December and that the property was subsequently sold for £770,000 through a different agent. Mrs Sokrati's evidence was primarily aimed at what would be a sensible price to ask for and accept in relation to the property and any question about that has now been resolved by the actual sale. 10. Not only do I consider this to be a fishing expedition and to be of no apparent relevance to the appeal, but I also remain of the view expressed in the judgment of 22 nd November that the conditions for permitting new evidence to be adduced on appeal are not met, in that this evidence could have been obtained with reasonable diligence in the court below. I accept, in the light of the further information supplied by the Appellant, that it was not necessarily reasonable, in the very short timeframe, to have expected him to have sought this information for the hearing before the Registrar. But I see no reason why he should not have done so prior to the hearing before the Royal Court on 19 th May, 2016. The fact that he has now seen the exact number of contacts between Le Gallais and Luce and Thompsons is not sufficient to explain any failure to seek this information earlier. 11. In his email to the Court of 25 th November the Appellant made the following submission in support of the contention that he could not with reasonable diligence have obtained the information in the Royal Court as follows:- "(8) Although there was some time between the hearing before the Registrar on 15 December 2015 and the hearing before the Inferior Number on 19 May 2016, by reason of the nebulous nature of the decision of the Registrar, it was not apparent in the proceedings before the Inferior Number that the Registrar had determined the application on any basis other than a quasi-contractual basis to which the Appellant referred in his application to appeal the decision of the Registrar. The Appellant respectfully notes that the uncertainty inherent in the decision of the Registrar was referenced by Appellant in his notice of Appeal to the Inferior Number.

- (9) As the [single judge] points out at paragraph 18(iv), it was the judgment of the Inferior Number that highlighted an alternate case theory that the Appellant is entitled to challenge as a matter of fact and of law; the opportunity to do so having been deprived of him in the court below for the reasons outlined in relation to the judgment of the Registrar. The first opportunity to apply for the admission of the relevant evidence is therefore in the context of the instant proceedings.
- (10) It follows that the Appellant has exercised reasonable diligence in both courts below in accordance with the decisions to which the [single judge] refers in paragraph 19 of his judgment." 12. With the greatest of respect to the Appellant, I am simply unable to follow this submission and do not consider that it adds anything to his primary submission, which is that he only became aware of the extent of the contact between Le Gallais and Luce and Thompsons when he received the bill of costs for taxation, which was after the hearing before the Royal Court. As already indicated, I do not consider that means that the information could and should not have been obtained with reasonable diligence prior to the hearing before the Royal Court. (ii) Information from Gaudins 13. It was not apparent to me from the Appellant's written submissions why he thought that information from Gaudins could be relevant. The appeal to the Court of Appeal is ultimately against the decision of the Registrar which was reached in December 2015. Gaudins were not instructed until April 2016 and their only involvement was to act in connection with the sale. They received the successful offer of £770,000 and saw the matter through to completion on 8 th July, 2016. During the hearing, the Appellant explained it in this way. He said that, because the offer was received so soon after the hearing before the Royal Court, there are reasonable grounds for believing that the existence of the offer must have been known to the Respondent at the time of the hearing before the Royal Court. If that had been known, the actual cost to the Respondent of the delay in the sale could have been calculated at that stage and he might therefore have been successful before the Royal Court in showing that the order of the Registrar resulted in over compensation of the Respondent for the delay in completion of the sale of the property. 14. He accepted in response to my questioning that this could only be relevant if he was successful in his appeal. He now had all the information about the sale proceeds and the timing of their receipt with the result that he had all the information necessary to support his argument before the Court of Appeal that the Registrar's order had resulted in over compensation. Thus the information which he now sought was not necessary for the purposes of his appeal. He ultimately accepted that this was so but submitted that it would still be relevant if he were to be successful because it would show that, had he been aware of the information at the time of the hearing before the Royal Court, he would have been successful before the Royal Court. It might therefore be relevant to the question of costs. 15. He further accepted during the course of the hearing that all that he really needed to support this point (should he succeed on his appeal) was the date upon which the ultimate purchaser made any initial offer and then the offer of £770,000 and the date upon which the existence of these offers was notified by Gaudins to the Respondent. 16. Whilst not conceding that this information was truly necessary, Advocate Godden accepted

that it could conceivably be relevant to the issue of costs if the Appellant were to be successful and if the evidence were to show that the Respondent knew about the offer prior to the hearing before the Royal Court. In the circumstances he did not ultimately contest that it would not be unreasonable for the Court to make a limited order in this respect. 17. For the sake of clarifying the position and possibly removing a potentially irrelevant line of argument, I considered that it would be proportionate to direct Gaudins to provide limited information, namely the date upon which the ultimate purchasers first made an offer and the amount thereof, the date upon which they made the offer of £770,000, the date upon which these offers were communicated to the Respondent and the date upon which the offer of £770,000 was accepted. 18. In summary, I dismissed the application in respect of information from Thompsons but granted it in respect of information from Gaudins to the limited extent described above. Authorities P-v-O (Matrimonial)

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