

JERSEY / JUDGMENT

Perry v Abraham [2002]

JRC 79 (14 April 2002)

[2002] JRC 79

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judgment

the COMMISSIONER: 1. In his application for an adjournment Advocate Le Cocq asked to address us on three main points. We granted the adjournment, and as we made that decision on the first point, we have not found it necessary to hear argument on the other two points. 2. The first point was that essential evidence was not available. We will pare the argument down to its essentials as the purpose of today's hearing - the adjournment having been granted - is to fix a timetable for what was an unusual application made to adjourn a case set down for 4 days, 2 days before the trial was due to start. 3. The action was set down for trial on the 14th July, 2001, however there is no need for us to go deeply into the facts. The defendant is the beneficial owner of land in the Algarve, known as HO3B, which is the planning consent definition under Article 13 SUT H03B of the Urban Plan of Quinta Do Lago in the Algarve. 4. A Joint Venture Heads of Agreement was entered into between the parties on the 19th April, 2000. The Heads of Agreement are governed by Jersey law. A Jersey Company, Lyonnesse Limited, with a branch in Portugal was formed. The apparent agreement is stalemated and is the subject of the litigation. The Plaintiff asks either for the transfer of 50% of the shares in Lyonnesse, or for a cash compensation equivalent. 5. The original pleadings and particularly the Answer were in a relatively straightforward form. After the trial dates were fixed the Defendant was given leave to file an Amended Answer. The first answer was no more, nor less, than a denial that the Plaintiff was contractually entitled to 50% of the shares of Lyonnesse. 6. A copy of the proposed amended answer was sent to Advocate Le Cocq on the 16th January, 2002. The trial dates were formally set down on the 21st January. Had Advocate Le Cocq read the amended answer, he would not have set the case down for hearing. The 16th January was a Wednesday and because of his Court commitments and the weekend, he candidly told us that he did not read the proposed amended answer. Presumably those assisting him did not read it either. It was not until 1st February that the realisation came to the Plaintiff that the issues now raised in the amended answer and counterclaim were new. One of the main causes of concern was the affirmation by the Defendant that the plan HO3B does not come into legal existence until a "Plano Geral de Urbanizacoe" (a PGU or Urban Master Plan) was approved and published. 7. There was a consent order on matters arising, and then a reply and answer to the amended answer and counterclaim was filed on the 5th March, 2002. Before us Advocate Le Cocq argued that the information about the PGU was entirely novel and entirely wrong. That may

not be borne out by his reply and answer to the amended answer and counterclaim dated 5 th March, which states for example at paragraph 8 (iii) (e): "The revised assembly of H03B still requires final approval upon publication of the PGU" . The pleadings no doubt will require further amendment. 8. In particular we have a document from the Mayor of Loule dated the 8 th April, which apparently states that the contentions of the defendant are not correct concerning the PGU, and Expert evidence may be required to prove or disprove that PGU point. There are further assertions made before us about some land called "the rustic land" which appeared to take the defendant by surprise in the hearing. 9. It would be quite wrong to proceed to trial with all this uncertainty of facts. We need a timetable and a realistic date for trial. We shall attempt to settle the timetable now. [There followed a discussion with Counsel] 10. th , 21 st , and 22 nd May, 2002 are the dates for the trial, with liberty to apply. No Authorities Page Last Updated: 22 Sep 2015 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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Prepared on 23 October 2026 · Esheria