

JERSEY / JUDGMENT

Perry v Abraham [2003]

JRC 109A (02 July 2003)

[2003] JRC 109A

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

in the name of two Isle of Man companies, Mayfield and Kreswell . As part of the settlement with the Thompson family, he was to receive all the remaining land in the area called HO3B. This is plots 1, 2, 40% of plot 4, 5, 6, part of 16, part of 15, and Area A which has been called 'the rustic land'. There were complications arising out of sensitive environmental

issues.

We will not complicate matters with them here at this stage. 8. Mr Perry and Mr Abraham met. They each give a different reason why they met. Mr Perry had a company called Codegest , in Switzerland. 9. Mr Perry told us that he knew of the disagreement with the Thompsons but he had understood that Mr Abraham was the legal owner of part of the land and, through the terms of the Tomlin Order, the beneficial owner of the rest. He walked round the land with Mr Abraham and he was excited by the development potential. There was continuing correspondence. 10. On 2nd November 1999, Mr Abraham wrote to Mr Perry and said this: "You always said that you might be interested in getting involved if I decided to go ahead and develop the site. If this is still the case, please give me a call to discuss the matter further." 11. On the basis of costing figures provided there was an intended profit of £3.87 Million. From his reply it is clear that Mr Perry was prepared to enter into a joint venture up to £1,500,000 through his offshore development company (the Swiss company, Codegest). 12. Both parties were experienced in joint ventures. A joint venture was proposed. Neither party involved wished to incur expensive legal costs and Mr Keith Payne was suggested to draw up some documentation. His 'formation notes' were sent to Mr Perry. 13. Mr Payne had been known to Mr Abraham for several years. Mr Payne was employed by Mr Abraham. He had become a managing director of another of Mr Abraham's companies which owns a development project in an area of the Aljento known as Monte Rocha. Mr Payne is, on his own evidence, very familiar with Portuguese planning and had been involved in the attempt to complete the necessary formalities for Planal to deliver the land under the Tomlin Order. He told the Court that he had been involved in the Portuguese property development and investment market for just over 20 years. 14. Although the document is headed "subject to contract" it is extremely detailed. The first paragraph headed "objective" is an example of the detail. It reads as follows - "Objective To establish a joint venture structure and operation that will develop the land known as HO3B under planning consent as defined under Article 13,

SUT HO3B of the Urban Plan of Quinta do Lago, copy of which is contained within schedule 1 of these notes, subject to the confirmation of such Urban Plan of Quinta do Lago in the Government Gazette (Diário de República) scheduled in first quarter 2000. Such development within these planning guidelines envisages the planning, construction, marketing and sale of luxury apartments in this prime location. The development cycle is programmed for 2 years commencing with the publishing of the Urban Plan of Quinta do Lago as above, and subject to site assembly procedures under the Urban Plan and detailed planning approvals, mobilisation could commence in the second half of 2000." 15. Other headings (with detailed comments) are "Structure", "Operation" and "Scheduling". The document concludes with these bases for further action: " Joint Venture Concept for Partners Discussion · Joint venture to be formed by agreement as soon as possible. · Land value for joint venture to be set at £3,000,000. Copy of current independent valuation enclosed in Schedule II. · Owners' pre-formation project costs to be set at not exceeding £100,000. · 50% equity partnership to be valued at £1,500,000. · Joint venture agreement will pass 50% NEWCO through Offshore B on payment of £250,000 supported by appropriate undertaking of transition of title to NEWCO of HO3B with balance (£1,250,000) to be paid on passing of title to NEWCO. · Outside pre-formation project costs projections, detail project costs should determine extent of NEWCO capitalisation. It should be envisaged that such capital requirement should not be less than 10% of project construction cost. · It should be envisaged in the J/V agreement that NEWCO should secure 100% construction finance for the project. · Agreement formed as to equitable distribution of profits arising from the project." 16. It was, after professional advice had been taken, decided to form a Jersey company, Lyonesse Limited, with a Sucursal, or branch, in Portugal. This would enable monies to pass to and from the Jersey Company without any tax deductions at source. Lyonesse has directors from Insinger de Beaufort, an international company with offices in Jersey. That firm manages Lyonesse and the Sucursal had two Procuradors, Mr Payne and Miss Karen Timms, who is now Mrs Perry. 17. There was a valuation report dated the 8th November 1999 from Mr Peter Densham ARICS. He valued the whole site at £3,000,000. In his report he considered the estate (HO3B) to be " the prime tourist/residential area in the Algarve region ". It was described as " prime location on an elevated West-facing hillside overlooking the Quinta do Lago lake and the Ria Formosa nature reserve" . There is no indication in that initial report that there might be planning problems. Indeed, in his examination-in-chief Mr Densham very candidly admitted, when questioned on the problems of the PGU which came to light later in the negotiations: " I would be right in saying that I haven't personally got hands-on experience of this type of obstacle to development before within Quinta do Lago. This one is slightly outside my experience to be honest ". It must have been an unusual problem (we shall see if it affects the case later in this judgment) because Mr Densham had worked in and around Quinta do Lago for 21 years and, as he said, he had " more or less grown up with the place". 18. Certainly at this early stage, neither Mr Perry nor Mr Abraham foresaw any potential planning problem. Meetings were held and advice was taken from Deloitte Touche in Lisbon. The advice on the financial structure of the proposed development is set out in a detailed letter from a partner of that firm. 19. Notes were taken of a meeting held on 28th February 2000 (at which the plaintiff, the defendant, Mr Mycroft Perry, a Mr Cariss and Mr Payne were present). Mr Payne typed the document in Mr Abraham's office. At this stage, the parties

were contemplating a profit in excess of £4,000,000 but they had agreed that while profit was a " fundamental objective" they sought to obtain " enjoyment and satisfaction " out of its implementation. At this stage the parties were thinking of a three year commitment before the developed site was to be sold. Notes of that meeting were also made by Mr Mycroft Perry. 20. Eventually Mr Payne prepared the document which is the basis of the dispute between the parties. It is dated 31st March 2000. It is important to set out the whole document: "31 st March 2000 HEADS OF AGREEMENT EQUITY JOINT VENTURE HO3B QUINTA DO LAGO Whereas Roger A. Abraham is the beneficial owner of an area of land known as HO3B and designated under the Master Plan of Quinta do Lago under SUT HO3B with outline planning permission designated under said Master Plan per extract enclosed, and Michael J Perry is desirous to enter into joint venture with said Roger A. Abraham to design, obtain detail planning permission, contract, construct and sell as luxury apartments for profit in 50/50% equity partnership, the following forms the heads of agreement for such venture:- 1. The parties and Addresses for Service. Roger A. Abraham (RAA) Apartado Quinta do Lago Almancil Algarve Portugal Fax: 00351-189-296537 Michael J. Perry (MJP) 8 Island Quay Salcombe , Devon TQ8 8OD Fax: 0044 1548

2. Legal Jurisdiction The joint venture will adopt and be considered under the laws of the States of Jersey.
3. Objectives of Joint venture To establish an equity joint venture partnership that will develop the land known as HO3B under planning consent as defined under Article 13, SUT HO3B of the Master plan of Quinta do Lago. The corporate structure of the joint venture partnership will be as agreed between the partners after review of the written advice of Deloitte Touche, Lisbon, a copy of which is attached for reference. The development will comply with the planning guidelines. The joint venture partners agree not to vary such planning guidelines, as set out in Article 13, SUT HO3B given that attempt of such variation may lead to protracted delays in development. The development will be evolved through market research and agreed between the partners. It is envisaged that, given the prime nature of the site, the development will comprise of high quality luxury apartments with a high standard of architecture, design and equipment. The objective of the joint venture is to seek maximum profit through the development, construction and sale of the apartments.
4. Time Scale It is envisaged that the project will have a three year time scale running from the date of the publishing the Master Plan of Quinta do Lago in the Diario de Republica . 8 months for concept, detail design, structures, mechanical and electrical submissions, construction contract development. 28 months for mobilisation, construction completion, licensing, marketing, sales and promotion to sell out. These functions may overlap and integrate.
5. Initial Assets As directed by tax advice and consequent structure, the initial assets of the joint venture will be established by RAA transferring the title of plots 3 & 17 into the nominated joint venture entity. Against such transfer, MJP will pay RAA £300,000 and the J/V is established. On the further land comprising of HO3B being transferred into the nominated joint venture entity, MJP will pay RAA a further £1.2 million against the total

value of the land of £3,000,000. Initial assets in terms of land will be £600,000 and increase to £3,000,000. This will be increased by the value of the construction on site. 6. Initial Investment It is envisaged that construction will be 100% financed through available packages competitively selected from Portuguese or other nation banks. The investment required from the joint venture partners should be correctly budgeted once the joint venture is formed and the concept product considered. However, from formation each partner should consider providing £50,000 as seed cash in banks for the joint venture. It is considered that a further equal sum may be payable in 6 months from formation. However, such sum will be dependant on the budget so formed for the project and the required cash flows. 7. Failure to proceed Given that the project is designed within the parameters defined in the Master Plan of Quinta do Lago, there is no risk of the project failing to gain approval. If the land comprising of HO3B, outside plots 3 & 17, fails to be transferred to the joint venture, then MJP will not pay £1,200,000 being his share of the joint venture. In that case, RAA will repay £300,000 to MJP and thence retain full title to 3 & 17. 8. Partners Ability to Commit The joint venture entity will be governed by the regulations of its legal domicile. Consequently, decisions in operating the company must accord with such legal requirements. The Partners conduct should be covered by a shareholders agreement which may stipulate the accord to be reached on key issues and will require joint sign-off fax or mail of key

issues.

These issues may include key appointments but should include financial issues such as budgets, increases in capital, distribution of profits and taxation issues. 9. Partner Disputes The Partners agree to endeavour to resolve any disagree[ment] on any item through discussion. They may, by agreement, refer the issue jointly RC & KRP and receive their joint recommendation for resolution. Should this recommendation not be accepted by either party then the dispute should be referred to an appropriate arbitration authority applicable to the legal jurisdiction. 10. Best Endeavours The Partners agree to use their best endeavours in the interests of the project, to agree the concept and to ensure good management of the project. In this regard, the Formation notes of 20 th February 2000 in terms of £. Operation are put forward as a template for effective operation and cost control of the project. Signed in agreement by the two parties this 19 day of April 2000 Roger A. Abraham Witnessed by Lucia A Figueiredo Occupation Secretaria Michael J. Perry Witnessed by Lucia Figueiredo 21. It was signed by the parties on the 19th April 2000. Each signature is witnessed by Mr. Abraham's secretary. Mr Payne was not present when the document was signed. He had not, apparently, expected it to be signed. As he told the Court " the worst form of joint venture, in my opinion, is a joint venture between two non-expert friends on a 50/50 basis ". Nevertheless, he drew the document up. It was clearly approved by two men neither of whom was a tyro in development projects. They each signed it. Mr Payne was aware that each had signed. 22. Mr Abraham agreed with us that the agreement was " very wishy-washy " and he had always been aware that if " you are going to do business with friends there must be no misunderstandings ". It is no doubt Mr Payne who

foresaw the problems that might arise when he drafted the Heads of Agreement. He wrote: "The joint venture entity will be governed by the regulations of its legal domicile." (That is by the laws of the Island of Jersey). He went on to say this: "Consequently, decisions in operating the company must accord with such legal requirements. The Partners' conduct should be covered by a shareholders agreement etc". (It is paragraph 8 of the Heads of Agreement.) If the shareholders' agreement were to be so important then there was every opportunity for two friends (as they then were), experienced in complex business ventures (as they were), to have written in the word "shall" instead of "should". They clearly read the document before they signed it. Mr Payne said as much in evidence: "I received a handwritten note from Michael Perry which set out certain key items he wished to be incorporated as part of the joint venture. Roger asked me if I could flesh out this hand written note and circulate it. The note I did was undated and the first draft therefore went down to Mr Perry and Mr Abraham and it came back from Mr Perry with two small modifications which were under Item 4 in respect of timescale. I then included these modifications that Mr Perry had included in a further draft and sent them down." 23. We have no doubt that the agreement is, and was intended to be, a contract. "La convention fait la loi des parties". Because we have had no submissions as to what constitutes a contract in Jersey law we need to remind ourselves that in the case of *Selby v Romeril*

(1996) JLR 210 at 218 the Court said this: "It is true that Pothier has often been treated by this court as the surest guide to the Jersey law of contract. It is also true, however, that Pothier was writing two centuries ago and that our law cannot be regarded as set in the aspic of the 18th century. Pothier was one of those authors upon whom the draftsmen of the French Civil Code relied and it is therefore helpful to look at the relevant article of that Code. Article 1108 of the Code provides : "Quatre conditions sont essentielles pour la validité d'une convention: Le consentement de la partie qui s'oblige; Sa capacité de contracter; Un objet certain qui forme la matière de l'engagement; Une cause licite dans l'obligation." In our judgment, it may now be asserted that by the law of Jersey, there are four requirements for the creation of a valid contract, namely (a) consent; (b) capacity; (c) an "objet" ; and (d) a "cause ". 24. Neither party could have foreseen that within six months a relationship which appeared to have been based on rock-solid foundations would have crumbled to the extent that it did. 25. Each party has declared that the nub of his case lies within the Heads of Agreement. Each party has a different clause on which to rely. 26. Advocate Hoy relies on clause 7 and particularly on the words " if the plots outside Plots 3 and 17 fail to be transferred to the joint venture, then Mr Perry will not pay £1.2 Million . In that case Mr. Abraham will repay £300,000 and then retain full title to 3 and ." Of course Clause 7 commences with the words (which were clearly believed to be realistic by each party when he signed). " Given the project is designed within the parameters defined in the Master Plan of Quinta do Lago, there is no risk of the project failing to gain approval". 27. In order to assess the validity of the contract, we must, in the course of this judgment, examine how the failure to put the land together in the manner envisaged in the Tomlin Order came about. 28. The plaintiff's case, on the pleadings, is clear. There is a date - November 1999 - at about which time the plaintiff and the defendant entered into

discussions to enter into a joint venture to develop, construct and sell luxury apartments on HO3B. This is described as a large plot and two small plots numbered 3 and 17. 29. It is put simply. Mr Perry would obtain 50% of his shares in the Jersey company, Lyonesse, when he had paid £300,000 and plots 3 and 17 had been transferred by Mr Abraham to Lyonesse. 30. The defendant in his pleading accepts unequivocally that the Heads of Agreement is the contractual agreement between the parties but there were other documents and implied terms which are necessary to examine in order fully to interpret the Heads of Agreement. 31. As Lord Hoffman said in *Mannai Limited v Eagle Star Assurance Co Ltd*

(1997) 2 WLR 945 at 972: "In the case of commercial contracts, the restriction on the use of background has been quietly dropped. There are certain special kinds of evidence, such as previous negotiations and express declarations of intent, which for practical reasons, which it is unnecessary to analyse, are inadmissible in aid of construction. They can be used only in an action for rectification. But apart from these exceptions, commercial contracts are construed in the light of all the background which could reasonably have been expected to have been available to the parties in order to ascertain what would objectively have been understood to be their intention. (*Prenn v. Simmonds*

[1971] 1 W. L. R. 1281, 1383.) The fact that the words are capable of a literal application is no obstacle to evidence which demonstrates what a reasonable person with knowledge of the background would have understood the parties to mean, even if this compels one to say that they used the wrong words. In this area, we no longer confuse the meaning of words with the question of what meaning the use of the words was intended to convey". The Heads of Agreement specifically refer to the written report of Deloitte Touche. It is attached for reference to the Heads of Agreement. There is a later reference to it in the Heads of Agreement. The parties are to be " directed by tax advice ." As well as the written report of Deloitte Touche there is also reference to the Formation Notes of 20 th February 2000. 32. If we consider the Heads of Agreement there are, in our view, central features which are of crucial importance:- (i) A Jersey company would be incorporated to own and to control the development. The report prepared in Lisbon by a partner in Deloitte Touche was sent on 13 th April 2000 (one week before the Agreement was signed) to Mr. Abraham in Quinta do Lago and to Mr. Perry in Geneva. (ii) The company would have a Surcusal or Portuguese Branch - which would hold title to the land. The company (Lyonesse) was incorporated in Jersey on 12 th June 2000. It was intended by Deloitte Touche that Mr. Abraham would initially hold all the shares in the company but that he would transfer Plots 3 & 17 to the Portuguese branch of Lyonesse. Mr. Perry would purchase 50% of the shares in the Jersey company in the name of his Swiss company Codegest . [This had clearly been discussed by the parties. When the partner of Deloitte Touche in Lisbon wrote to Mr. Abraham on 13 th March 2000, following a meeting with the defendant and Mr. Payne, he said this: " Newco Lda is established in Portugal with two quotaholders

- being offshore companies (one Jersey, the other Swiss, each holding 50%).] (iii) Mr. Perry was to buy 50% of Lyonesse for a consideration of £300,000. Each party would put in £50,000 for working expenses and then, when the "larger plot" was ready to be transferred, Mr. Perry would loan £1,200,000 to Lyonesse. Then, by way of "capital affecto" the monies would be passed down to the Portuguese Surcusal. The letter from Deloitte Touche goes on with much useful tax avoidance advice. The essential question is whether the Heads of Agreement is a contract binding on the parties and whether Mr. Abraham should have transferred the shares when he received the £300,000. This Court has no doubt that the Heads of Agreement faithfully reproduces the intention of the parties. That view is strengthened by the accompanying documentation. In our judgment the document and the written background to it meets all the requirements in Chitty on Contracts (28 th Edition), large tracts of which have been cited to us by Advocate Hoy but of which we need only cite the following - "Intention of the parties: The task of ascertaining the intention of the parties must be approached objectively: the question is not what one or other of the parties meant or understood by the words used, but "the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract" The cardinal presumption is that the parties have intended what they have in fact said, so that their words must be construed as they stand. That is to say the meaning of the document or of a particular part of it is to be sought in the document itself. "One must consider the meaning of the words used, not what one may guess to be the intention of the parties". However, this is not to say that the meaning of the words in a written document must be ascertained by reference to the words of the document alone. In the modern law, the courts will, in principle, look at all the circumstances surrounding the making of the contract which would assist in determining how the language of the document would have been understood by a reasonable man". 33. The document is clear: "As directed by tax advice and consequent structure, the initial assets of the joint venture will be established" (these words are not unimportant) " by RAA transferring the title of plots 3 & 17 into the nominated joint venture entity", (that is, Lyonesse) "Against such transfer, MJP will pay RAA £300,000 and the J/V is established". 34. It beggars belief that the defendant assumed from the document that he had signed that (in his words) " £300,000 was an initial payment to give Mr. Perry the opportunity, if I could deliver my part of it, to become involved in this project". 35. In his examination-in-chief, Mr. Abraham said that he " did not read the Heads of Agreement as to deliver the shares without a shareholders' agreement". Perhaps in that same examination-in-chief there is a pointer as to why the relationship broke down. Having dealt with the undisputed fact that there was no PGU Mr. Abraham said this - " Also I was concerned about Mycroft Perry becoming involved as a development director. In fact, as I think he volunteered yesterday, it was certainly without my knowledge or the approval of the board of Lyonesse" (our underlining) " that Mycroft Perry printed business cards describing himself as the development director of Lyonesse. There was no such appointment and I am sure that was well intentioned because he was talking to architects and he wanted to have some status, but I just don't believe that Mycroft Perry had the required, or has the required,

ability to run a development of this size". 36. It would be difficult for the defendant to escape the import of paragraph 8 of his re-amended Answer and Counterclaim - "Save that the plaintiff was also to pay the defendant £300,000 in consideration of the defendant's transfer of plots 3 and 17, paragraph 7 is admitted". 37. The defendant's pleadings go on to deny that Codegest is entitled to 50% of the shares in Lyonesse. In the light of the advice from Deloitte Touche which expressly refers to Codegest we regard the arguments of the defendant on this point as untenable. 38. There appears to be an argument that the agreement lacks certainty because Lyonesse was only incorporated on 12 th June 2000, whereas the Agreement was signed on 19 th April 2000. We can see nothing in that. When plots 3 and 17 were transferred by Lyonesse on 13 th October 2000 the company was established in Jersey. 39. The plaintiff requested his shares in September, October, November and December 2000. 40. The defendant argues that since proceedings commenced in this action, there has been transferred into Lyonesse Plots 1, 2, 4, 5 and 6 in addition to Plots 3 and 17. What is still missing - according to the evidence of Dr. Augusta Bravo - is Area A and parts of plots 16 and 15. 41. Had all been straightforward this Court has no doubt but that it would have ordered specific performance of the defendant's obligation to pay over 50% of the shares of Lyonesse on 13 th October 2000. 42. The defendant, however, raises three defences which, he says, vitiates the contract - (i) Uncertainty (ii) The condition subsequent argument (iii) A breakdown in trust and confidence between the parties. This is based on the plaintiff's reply that it was an implied term in the Heads of Agreement that the parties would act in good faith towards each other. What the reply says (paragraph 8(i)) in reply to the defendant's assertion that "the plaintiff and the defendant would each act in good faith one towards the other") is the following - "The plaintiff admits an implied term of good faith as alleged. The plaintiff avers that the defendant has acted in bad faith by, inter alia, failing to offer any legitimate reason why the transfer of 50% of the shares of Lyonesse has not occurred since 13 th October 2000; by failing to use his best endeavours in the interests of the JV contrary to clause 10 of the JV and in offering to sell HO3B to third parties since". 43. Let us examine each of the defences raised by the defendant - 44. (i) Uncertainty Clause 8 of the Agreement says that: "the partners' conduct should be covered by a shareholders' agreement which may stipulate the accord to be reached on key issues and will require joint sign-off by fax or mail of key issues". Mr. Perry, whose evidence this Court felt was given honestly and directly, said that he was not given a shareholders' agreement. He told the Court that his farm in Hungary was run by four partners and the shareholders' agreement was introduced after two years. Even Mr. Payne, a graduate of Edinburgh University, admitted that when he said "should" he meant "should" . But he went on, somewhat ambiguously, to say this : "Perhaps I should have put "must" in there, but I have a great deal of experience of joint ventures on various levels". If the defendant and Mr. Payne felt that a shareholders' agreement was essential, why did neither of them mention it as being essential to Mr. Perry? If the defendant believed as he said in evidence, that the £300,000 was an initial payment towards a 50% joint venture in the company which would ultimately own HO3B why did he not say so? Having regard to the evidence we have seen we find the protestations of Mr. Payne and the defendant suspect. When Mr. Payne wrote to a director of Lyonesse in Jersey on 13 th November 2000 he said

this - "We would expect these negotiations to be complete shortly and the referred land then transferred to the Lyonesse branch. When this is done and confirmed through the land registry, we will be contacting Codegest SA to effect the balance payment of £1.2million and upon receipt, issue instructions to you to pass the 50% of the shares in Lyonesse to Codegest SA in compliance with the partners' Heads of Agreement 31.3.00". Here we have a letter where Codegest is apparently accepted as the medium for the plaintiff. There is nothing in the pleading questioning the standing of Codegest . The company is mentioned without censure by Deloitte Touche before the Heads of Agreement were signed. The amended Order of Justice states that " On or about 13th October 2000, plots 3 and 17 were registered in the name of Lyonesse ". That is specifically admitted by the defendant in his re-amended Answer. We have no doubt that although the provisional registration later lapsed this had no effect on the ownership of the plots. We say this having regard to the expert evidence that we heard. It cannot be often that two experts in Portuguese planning law are in such disagreement. We have the task of choosing which of the experts' evidence we prefer. We must say at once that we find the choice of Mrs. de Rougemont as unfortunate. The defendant has had a business relationship with this chosen expert since 1987. That is according to Mr. Abraham. Mrs. de Rougemont put it differently. She said that when she was a junior lawyer in a Lisbon law firm, she assisted the senior partner in that firm who was instructed by Planal before Mr. Abraham bought his shares. As she put it, " I probably did a lot of photocopying ". That reply struck us as particularly disingenuous. Mrs. de Rougemont has socialized with Mr. Payne since she first met him in November 2001. It was Mr. Payne who instructed her to be the expert in this case. Mrs. de Rougemont had met Dr. Augusta Bravo (the defendant's lawyer) who has acted for the defendant since November 1997. Dr. Bravo has rented a room in Mrs. de Rougemont's office in Lisbon since April 2002. She met Mrs. de Rougemont in February of that year. It is clearly an unusual arrangement. Dr. Bravo appears on the notepaper with sixteen other names (including that of Mrs. De Rougemont). The notepaper is headed "Neville de Rougemont & Associados ". Dr. Bravo told us that she has no connection with Mrs. de Rougemont or her firm. She merely rents a room in the building. She is a separate legal entity practising in her own right. Her clients (and presumably Mrs. de Rougemont's clients) would know that her name appears on the notepaper to show the building in which she works. No more. No less. It was Mrs. de Rougemont, the defendant's expert witness, who helped Dr. Bravo to draft the objections to the Land Registry and to make the formal application. There is absolutely no doubt that Dr. Bravo was acting on Mrs. de Rougemont's behalf when she made the last-minute application to object to the Land Registry. (Dr Bravo's objection, according to her evidence, was made independently of the defendant). Mr. Abraham was aware that she was going to make the objection but he did not instruct her to do it. Apparently, under Portuguese law a lawyer's conduct is governed by his code and no instructions are needed to safeguard a client's interest. Indeed Dr. Bravo went so far as to say that even if Mr. Abraham had objected to the protest going in, she would have been bound to do it because such an action, if she deems it right, is entirely her responsibility. In this case the defendant was told by Dr. Bravo that she was going to make the application and did not object. Mrs. de Rougemont asked Dr. Bravo to

carry out the enquiries on her behalf. Mr. Abraham was kept informed by Dr. Bravo but Mrs. de Rougemont did not ("absolutely not") tell Miss Correia (the plaintiff's expert). She declined to say why, except to say it is written in the Portuguese Code that one colleague is not allowed to make adverse comments about another colleague. We do not know what these "adverse comments" might be. What we do know is that there was a very late objection to the *contracta do permuta* of 1993. This was arranged between Dr. Bravo and Mrs. de Rougemont with the knowledge of the defendant. Dr. Bravo had known of the problem since 1994. Clearly no one mentioned it when the Tomlin Order was agreed. There is no mention of any problem over the 1993 *contracta do permuta* in the first report of Mrs. Rougemont dated 18th April 2002. The objection was not authorized or approved by Lyonesse. It is not a question of personality: this Court does not believe that Mrs. de Rougemont was an impartial witness whose duty was primarily to the Court and for that reason we accept the evidence of Miss Correia where there is dispute between the experts and that dispute is outwith the knowledge of the members of this Court. On the question of uncertainty (the first ground of the defendant's defence), Mr. Hoy cited to us a passage from the decision of the House of Lords in *Walford v Miles*

- (1992) 1 All ER 453 at 460 where Lord Ackner said - "Before your Lordships it was sought to argue that the decision in the *Courtney & Fairbairn Ltd* case was wrong. Although the cases in the United States did not speak with one voice your Lordships' attention was drawn to the decision of the United States Court of Appeals, Third Circuit in *Channel Home Centers Division of Grace Retail Corp v Grossman* (1986) 795 F 2d 291 as being 'the clearest example' of the American cases in the appellants' favour. That case raised the issue whether an agreement to negotiate in good faith, if supported by consideration, is an enforceable contract. I do not find the decision of any assistance. While accepting that an agreement to agree is not an enforceable contract, the United States Court of Appeals appears to have proceeded on the basis that an agreement to negotiate in good faith is synonymous with an agreement to use best endeavours and, as the latter is enforceable, so is the former. This appears to me, with respect, to be an unsustainable proposition. The reason why an agreement to negotiate, like an agreement to agree, is unenforceable is simply because it lacks the necessary certainty. The same does not apply to an agreement to use best endeavours. This uncertainty is demonstrated in the instant case by the provision which it is said has to be implied in the agreement for the determination of the negotiations. How can a court be expected to decide whether, subjectively, a proper reason existed for the termination of negotiations? The answer suggested depends upon whether the negotiations have been determined 'in good faith'. However, the concept of a duty to carry on negotiations in good faith is inherently repugnant to the adversarial position of the parties when involved in negotiations. Each party to the negotiations is entitled to pursue his (or her) own interest, so long as he avoids making misrepresentations. To advance that interest he must be entitled, if he thinks it appropriate, to threaten to withdraw from further negotiations or to withdraw in fact in the hope that the opposite party may seek to reopen the negotiations by offering him

improved terms. Mr. Naughton, of course, accepts that the agreement upon which he relies does not contain a duty to complete the negotiations. But that still leaves the vital question: how is a vendor ever to know that he is entitled to withdraw from further negotiations? How is the court to police such an 'agreement'? A duty to negotiate in good faith is as unworkable in practice as it is inherently inconsistent with the position of a negotiating party. It is here that the uncertainty lies. In my judgment, while negotiations are in existence either party is entitled to withdraw from these negotiations, at any time and for any reason. There can be thus no obligation to continue to negotiate until there is a 'proper reason' to withdraw. Accordingly, a bare agreement to negotiate has no legal content." Mr. Hoy drew our attention to clause 10 of the Heads of Agreement where the parties agree to use their "best endeavours" in the interests of "the project" and to "agree the concept". In our view this was neither an agreement to negotiate nor an agreement to agree. When the plaintiff wrote to Mr. Payne on 27 th September 2000 and said "I presume once the two blocks are in Lyonesse, Codegest will be promptly issued with its 50% shares", there was no reply. It may be that Mr. Payne had lost confidence in the plaintiff. As he says in his letter to the defendant of 19 th September 2000 - "My concern is centred on the fact, arising from notes from the potential partner that he has an unrealistic view of what lies ahead and while he may be an experienced UK house builder, he plainly does not understand the Portuguese system, nor the particular problems which are associated with this complex assembly". The defendant says that even the payment of £300,000 is uncertain. The defendant said in evidence that the £300,000 was an "advance on a joint venture on HO3B". This was because the original valuations of the individual plots by Richard Neubersch valued the plots at £600,000. For the purposes of this particular arrangement between friends he was paying an advance of £300,000 towards the larger venture. That seems to us to be muddying the waters. In the terms of the agreement it was envisaged that the defendant would transfer title of plots 3 and 17 into Lyonesse. "Against such transfer" the plaintiff would pay his £300,000 and the joint venture 'would be established'. The fact that the plaintiff paid his £300,000 before the plots were transferred is not relevant. The defendant gave instructions for plots 3 and 17 to be transferred to the Surcusal and on 13 th October 2000 the title to plots 3 and 17 were transferred to the Surcusal. Mr. Abraham, under cross-examination, argued that "clean title" was not received until January 2002. Miss Correia made it very clear that in accordance with the Portuguese Civil Code, transfer of ownership occurs when notarial deeds of purchase and sale are signed. A provisional registration would not affect ownership. Ownership passed with the deed. The argument is perhaps academic in another sense. The plaintiff pleads in his amended Order of Justice that - "On or about 30 th October 2000, plots 3 and 17 were registered in the name of Lyonesse". The re-amended Answer admits this at paragraph 10a. We find as a matter of fact and law that the plaintiff was entitled to his 50% of the shares in Lyonesse. The defendant, however, goes further. He says that the parties expressly contemplated that their venture might come to nothing. That would mean that if that event occurred, their relationship would be determined and the parties would receive their investments back. Clause 7 of the Heads of Agreement reads - "Given that the project

is designed within the parameters defined in the master plan of Quinta do Lago, there is no risk of the project failing to gain approval. If the land comprising HO3B outside plots 3 and 17 fails to be transferred to this joint venture, then MJP will not pay £1,200,000 being his share of the joint venture. In that case RAA will repay £300,000 to MJP and thence retain full title to 3 and 17". When the parties entered into the Heads of Agreement there was a PGU of 1991. That plan was approved by the Camara and was approved by a governmental decision. Miss Correia was in no doubt that as a matter of planning law an application could be made to develop HO3B under the existing PGU. This was accepted by Mrs. de Rougemont. To the extent that there were an effective PGU then the Camara was acting lawfully and made a proper decision. There is a new plan UOP5. There are, apparently, substantial changes from the 1991 plan to UOP5 but Mrs. de Rougemont agreed that these changes were not relevant to HO3B. In our judgment the 1991 plan is preserved by Article 29 of the PDM of 1995 and if Miss Correia's translation of Article 29 is correct (and Mrs. de Rougemont appears as far as we understood her evidence to accept it) and if it covers "surrounding areas destined for building" then that is sufficient to cover the definition of HO3B. Clearly there must be a time limit for the assembly of the land but we have to ask ourselves for the purpose of this judgment whether the defendant has caused a delay (for reasons of his own) which has prevented the putting together of HO3B. In the event, we cannot find that the agreement fails for want of uncertainty. We say that because we do not agree that this was merely an agreement to agree. That, in any event, is not pleaded. This case is not on all fours with *Walford v Miles*

- (1992) 1 All ER 453. This was not a "lock out" agreement where Mr. Abraham had agreed (for cause) with Mr. Perry not to negotiate with anyone except Mr. Perry in relation to the sale of the property. That event was not in the contemplation of either party when they entered into their contractual relationship (for such, we hold, it was). What Advocate Hoy appears to argue is that Mr. Perry having paid his £300,000 (and not having received his shares) now seeks to acquire an equal share in Lyonesse and therefore is laying claim to one half of the value of a greater and considerably more valuable area of land. That is not what the Heads of Agreement state. Mr. Abraham stated quite clearly under cross-examination that however poorly or badly drafted, the Heads of Agreement were binding on him for the period of the agreement. The £1,200,000 in our judgment would be paid once the remaining plots had been transferred to the Surcusal. It is not insignificant that the £300,000 was paid before plots 3 and 17 were placed in Lyonesse Limited. It is in our judgment axiomatic that once the £300,000 were paid then Mr. Abraham was liable to give to Mr. Perry (or to his nominee company, for that is in the contemplation of the Agreement) the shares. A "50/50%" equity partnership must mean just that. With the shares held jointly, Mr. Perry could have played an active part in the putting together of HO3B. The theory of Mr. Abraham that the £300,000 was "an initial payment" is not borne out either by the written documentation or by the evidence that we have heard. (ii) The condition subsequent argument Advocate Hoy goes further, however. He argues that the Heads of Agreement expressly provides that the venture might come to nothing. The

parties, when they signed the agreement, could see no risk of the project (HO3B) failing to gain approval. It was only if the balance of the land "failed to be transferred" (whatever that means) that the project would come to nought. Why has the land not been transferred? Is it, because of impossibility or is it because of subtle machinations by the defendant? (iii) The breakdown in trust and confidence between the parties That in effect ties in with the third ground of defence, which is the breakdown in trust and confidence between the parties. Let us first examine that last point because it may have a bearing on the question of impossibility, There is no doubt in the Court's mind but that there has been a catalogue of negotiations with third parties. How does the defendant deal with a letter dated 2 nd November 2000, seven months after the Heads of Agreement were signed, which, as we have said, contractually bound the parties? We need to set the letter out. It is written to Mr. Jorge Apollo by Mr. Payne as one of the two Procuradors of the Sursusal. It is a facsimile message headed " Lyonesse Limited" Sursusal am Portugal and it reads - "Dear Mr. Opollo , Development Site HO3B Quinta do Lago Subject to contract Following your telephone conversation with him, Roger Abraham has asked me to set out the current position concerning HO3B. As you know, the site covers 17,500M2 with approval for 152 bed spaces on 10,500M2 gross construction area inclusive of 3,500 M2 car park. A copy of the most recently approved masterplan is attached for your perusal. The seven plots which comprise HO3B have been recently valued by Richard Neubersch of Knight Frank and Rutley at around £4,500,000 and Mr. Abraham has two joint venture partners with whom he is discussing terms at the present time. However, it is not too late to consider an outright sale if your client wishes to make an offer approaching the current plot values. As you know, Mr. Abraham is recovering in London from his recent hip replacement surgery and will not be back in the Algarve for some weeks. He has, therefore, asked me to handle the matter on his behalf. I should confirm that delivery of the land would be through a Jersey limited company with an already established Portuguese branch (sursusal am Portugal) with SISA tax paid. Please do not hesitate to contact me if you or your client require further information and I look forward to hearing from you. I remain, Yours truly Keith R. Payne Procurador " The very next day, on the same headed notepaper, Mr. Payne was writing in the friendliest of terms to the plaintiff about the progress that he and his employer (the defendant) are making with Planal . The answers given in evidence regarding this letter by Mr. Payne and the defendant were in our view deliberately misleading. Mr. Payne told us that he just did not know who Mr. Abraham was referring to, nor the terms that he was discussing. Mr. Payne eventually put forward the explanation that he could not recall the letter and that it probably was never sent. Mr. Abraham however emphatically stated that neither he nor Mr. Payne were discussing joint ventures with two partners. He said quite straightforwardly that "we were discussing a joint venture with Michael Perry". On this point - because we have to weigh up the witnesses and to assess the evidence - we had an extraordinary late exchange of evidence where a Mr. Ventosa swore a late affidavit. Mr. Ventosa is 40 years old. He is a property developer in the Quinta do Lago and Val do Lobo areas of the Algarve. He lives in Loule and his wife is a judge. He had, according to his evidence, made contact with Mr. Apollo. He had sent him a

letter offering to purchase HO3B for £5,000,000 in November 2002. (This was, of course, when this case was well under way). He had been given consent by his clients to disclose the offer letter to this Court. It is an extraordinary sequence. Mr. Ventosa told us that he knew Mr. Apollo well, that he had spoken in some detail to him about HO3B and he had met with Mr. Apollo and the defendant in Mr. Apollo's office. It was a brief meeting. He made an offer for the "seven plots" with the 7,000 metres attached to the offer included but only if it were approved. A second meeting, according to Mr. Ventosa, took place at Mr. Abraham's house. Again, he said that Mr. Abraham and Mr. Apollo were present. He described the inside of the house. It is quite clear to us that Mr. Ventosa was unknown to the plaintiff until January of this year. The defendant denied any meetings (either in the office of Mr. Apollo or at his home). Mr. Apollo has known Mr. Abraham since 1987. He had, on his evidence, never been in the defendant's home. Someone is clearly lying. It is not a question of a mistake. We have considered this matter with some care because it goes to credit. We entirely accept Mr. Ventosa's evidence. He came across to us as a man who was honest and entirely trustworthy. We accept that he spoke to Planal and its relation to the HO3B. We accept that he went to the defendant's house for the meeting. We accept that, having spoken to Mr. Apollo on numerous occasions on the telephone, that thereafter he arranged for members of Prasa (his well-known Spanish client company) to visit the site. The land is now valued at £5,000,000 (we accept the evidence of Mr. McMahon on this point). We started with a denial and we ended with a denial. We have little doubt in our minds that the defendant, realizing that his investment was worth far more than he originally thought, exasperated by Mycroft Perry's determined seeking of American consultants, attempted to frustrate his original partner at every turn. Mr. Apollo stands to make an enormous commission if he is instructed in the sale. We do not believe that the defendant and his agent, Mr. Apollo, had forgotten the two offers made. In our judgment, Mr. Abraham and Mr. Apollo were selective in what they recalled. We ask ourselves these questions. Why did Mr. Ventosa approach and deal with Mr. Apollo in his offer for HO3B? Why did Mr. Apollo have to disguise the letter of 5th November 2002 that had been sent to him by Mr. Abraham before he sent it on to Mr. Ventosa by changing the headed notepaper for his own and covering up the defendant's signature? The answer to both these questions, in our judgment, was to preserve his potential commission. The question of Mr. Ventosa being allegedly guilty of shop-lifting was interestingly and quite compellingly explained to us and to our entire satisfaction. If there is bad faith then it is not on the part of the plaintiff. 45. There remains "the condition subsequent" argument. If HO3B cannot be transferred (despite the optimism of the parties when they signed) then the agreement cannot be enforced. 46. The question that has caused much concern is whether or not the plan of 1991 is valid and effective for the assembly of HO3B. If it is necessary to wait for the UOP5 - the new PGU - then our decision may be coloured by that fact. It is perfectly clear from Miss Correia's evidence that the General Urbanisation Plan of Quinta do Lago (the PGU) with its last alteration approved on 14th October 1991 has been approved not only by a decision of the Government but also by local government agencies in the Algarve. From her report Miss Correia makes it clear that Article 29,

Number 4 of the Municipal Plan of Loule of 1995, which stipulated that the possibility of building in urban tourist areas, meant " areas occupied by Tourist Developments or with projects of similar nature already approved, as well as the surrounding areas, that due to its nature and objective are destined for building and other developments which are relevant for tourism in accordance with the drawings attached to the PDM". (This was her translation and it was accepted as an adequate translation by Mrs. de Rougemont.) 47. Mrs. de Rougemont took exception to the interpretation put on the Article by Miss Correia. What she said was this - "The way you prove your point is very simply this, right? There is no building - I think we have seen that - on this land. We have seen photographs, da, da, da. So if you want to take advantage of 29(4) you must produce the approved project. Now this Court has not seen an approved project. What this Court has got in its bundles is an application for a project, which is wrong. So really it's like flogging a dead horse, I'm afraid". 48. If that is the correct interpretation of Article 29(4) then Miss Correia and the Camara are in error. If Mrs. de Rougemont is right when she says in her second report that she requested Dr. Augusta Bravo to make formal application to the DGOT in Lisbon and then confirmed that there " was no urbanisation plan in force in the Quinta do Lago area" , and if, as Mrs. de Rougemont says, " the DGOT is the highest authority in Portugal to which such a request can be addressed so there can be no further argument on this question " , then why do the Portuguese Courts have to make contrary decisions ? In our view, assessing the situation, we can see that the DGOT can say whether or not a plan has been published but they cannot say what the legal effects of publication or non-publication might be. 49. In our considered view the 1991 Plan is preserved by Article 29 of the PDM of 1995. Mrs. de Rougemont, in fact, said as much. There has been much development in Quinta do Lago and the 1991 PDU has been used as the planning instrument. 50. We have already expressed concern at the way that the defendant's expert and Dr. Bravo conferred before objecting to the contracta do permuta of 1993 before the Land Registry. That application could have been made by Planal much earlier. It does seem to us that this was a cynical objection raised at a very late stage of these proceedings. It was, after all, known at the time when the High Court was seized of the matter during 1995 to 1997. It is, as we have said, even more disturbing that Mrs. de Rougemont makes no mention of it in her first report when she refers specifically to the contracta do permuta . 51. Miss Correia has told us, and we accept her evidence as opposed to the contrary view of Mrs. de Rougemont, that this very small area of 12 square metres forming part of plot 15 can be rectified. It is less than the 3% envisaged by the planning authorities and it can be corrected by the issuing of an addendum to the Alvara . 52. It would be relatively simple, in our view, for Lyonesse (which apparently did not instruct the raising of the objection) to withdraw the objections and apply for an addendum to the Alvara . 53. Listening with some care to the evidence of Mr. da Silva, who is a director of Quinto do Lago SA which was formerly Planal it does seem to us that Planal has done everything that it could do under the terms of the Tomlin Order. Before the exchange of contracts could be registered Lyonesse (without apparently having met to decide the course of action) raised objections at the Land Registry. That was a few days before the resumed hearing on 9 th December

2002. Mr. da Silva clearly wanted matters to be concluded as did Mr. Bayliss who came to Court as a director of Quinta do Lago Limited. There is no doubt in the Court's mind that final assembly of HO3B was a realistic possibility before it was blocked by the objections to the Registry. Mr. Abraham clearly sees the spectre of being unsecured but there is no doubt in the Court's mind, and having heard Mr. da Silva, that the danger is unrealistic. There would apparently be no delay if a joint application were to be put in for an addendum to the Alvara . The application, as Mr. da Silva suggested, could be made jointly by Planal and Lyonesse. Even if it were made by Planal the benefit of the consent, under the Tomlin Order, could be then transferred to Lyonesse. As Miss Correia told us, it is only necessary to make an application under Article 36 of the Law for such matters that are permitted to be altered under Article 29. Indeed Mrs. de Rougemont agreed that if all the papers had been put in, the project would now be under way. 54. We have an extraordinary situation. Planal and Quinta Park Limited have no objection to the assembly of HO3B. The Town Council by its approval permitted the contract of exchange between Quinta Park and Planal to take place on 18 th November 2002. This complied with the contracta do permuta of 13 th December 1993. That act was approved by an independent notary. 55. Of course, had Mr. Perry been a shareholder of Lyonesse then Mr. Abraham would have conferred with him and they might well have resolved matters together to their mutual advantage. 56. We do not conceive on our reading of the Heads of Agreement that the parties intended the contract to terminate at the end of a twelve-month period. What has happened, in our judgment, has been a deliberate attempt by the defendant and those close to him to prevent this agreement from coming to its inevitable

conclusion.

57. In *Taylor v Fitzpatrick* (1979 JJ1), in allowing specific performance for the sale of shares Sir Godfray Le Quesne QC said this at page 17 (asking whether the contract would have been specifically performed by the Court in England) - "First a contract for the sale and purchase of land is invariably regarded without proof and even if the land were in no way special, as one whose nature is such that damages would not be an adequate remedy. Secondly, the Court habitually grants specific performance of a contract for the sale and purchase of shares in a company in which there is not a free market, and a fortiori in the case of shares in a private company". 58. That was the law in England and that is now the law of Jersey. We do not believe that in this case damages would be an adequate remedy. It has been said that unless damages and specific performance provide identical benefits, then specific performance should be granted. 59. Mr. Perry, after all, has agreed with Mr. Abraham " each will have the right to purchase one apartment of their choice from Newco at cost price". That forms part of the formation notes drawn up between 21 st February and 1 st March 2000. 60. Advocate Hoy, whose arguments have been firmly held and admirably expressed argues against the equitable remedy of specific performance. He strongly argues that this equitable remedy should not be granted in the circumstances of this case. 61. Advocate Hoy cites at some length from *Chitty on Contracts* 28 th Edition Volume 1 but particularly from

paragraph 28 - 021 where the author says - "The equitable principle of refusing specific performance extends to contracts involving personal service even though they are not contracts of service. Thus it has been held that an agreement to allow an auctioneer to sell a collection of works of art cannot be specifically enforced by either party. Similarly an agreement to enter into a partnership will not be specifically enforced as "it is impossible to make persons who will not concur carry on a business jointly for their common advantage"."

62. In our judgment that begs the question. By taking the £300,000 the defendant was a trustee in equity for shares and the plaintiff became the equitable owner of the shares. Mr. Perry will not receive the balance of the land but he will have control over events. He is ready, willing and able (from what we have heard) to pay the £1,200,000. Indeed, when the land falls in, as we believe that inevitably it must, if Mr. Perry were to default then Mr. Abraham, under the terms of the Heads of Agreement, could compel him to pay. 63. We do not conceive that this is a contract for personal services. It is, quite simply, a contract for the sale of shares. The shares are a commodity and if the parties do not see eye to eye it is not for the Court to carry out what Advocate Hoy refers to as "24 hour watch". This is not an application for a mandatory injunction. 64. Mr. Abraham constantly showed why he was not willing to proceed. As he said in cross-examination - "..... within say six months, say October/November, that the only matter, the only thing that has become clear to me, was that Mr. Perry seemed to be handing over the responsibility for his side of the proposed venture to his son, who I believed to be a very nice person but not competent to do this, and we In the formation notes, it was agreed we would appoint professional managers and so on. There is a whole list of functions or matters that were to be agreed and not one of those had been agreed. So I was very nervous that there was no basis on which this thing was going forward". Again, he said, when asked the question by Advocate Le Cocq - "There is no reason at all when the PGU is published, if it is necessary, why this can't go ahead, is there?" - "No sir, but the relations between myself and Mr. Perry have totally broken down. There is no way that I could do a joint venture with Mr. Perry". 65. Of course we also have concerns that Mr. Abraham now has a possibility of selling the land for £5,000,000 to £6,000,000. That is an incentive for inaction. 66. When the waters became badly muddied in and around the latter part of the year 2000, Mr. Perry wrote on 11 th December of that year a memorandum to his erstwhile business colleague which starts off with these words - "Dear Roger, I have stopped shaking and have calmed down a little. We must once and for all, settle this situation, issue the shares and then probably let other people get on with it for us. It's now totally ruined for me". 67. Once the parties are on an equal footing there are sensible provisions under Article 141 and 143 of the Companies (Jersey) Law 1991 to end a deadlock. There are other legal and sensible ways to end what might indeed be a deadlock. 68. We are not prepared to enter into the question of damages which we do not consider an adequate remedy. We order that the defendant transfer or procure the transfer to the plaintiff or his nominee 50% of the shares in Lyonesse Limited within seven days hereof. *Authorities Selby -v- Romeril*

(1996) JLR 210 . *Mannai Ltd -v- Eagle Star Assurance Co., Ltd* (1997) WLR 945. *Prwenn -v- Simmonds*

[1971] 1 WLR 1281, 1383. Chitty on Contracts (28 th Edition): Volume 1. Walford -v- Miles (1992) 1 All Er 453. Taylor -v Fitzpatrick (1979) JJ 1. Companies (Jersey) Law 1991. West -v- Lazard Brothers

[1993] JLR 165 . ANZ Executors and Trustees, Ltd -v- Humes

[1990] VR 615. Page Last Updated: 27 Aug 2015 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/2003/>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/perry-v-abraham-2003-jrc-109a-02-july-2003>

Prepared on 27 October 2026 · Esheria