

JERSEY / JUDGMENT

Representation of Chapman and So [2022] JRC 138 (22 June 2022)

[2022] JRC 138

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judgment

the COMMISSIONER: 1. This judgment concerns two Representations brought ex parte on a Friday afternoon in which the Representors sought orders from the Court confirming retrospectively a number of contracts which had purportedly been passed before the Royal Court with such confirmations being recorded in the Jersey Property Registry. The Representations first came before the Royal Court on 6 th May 2022 when Commissioner Clyde-Smith ordered they be adjourned for one week in order that further evidence could be provided. On 13 th May, this Court ordered two parties to be convened and the matter to be adjourned for a further two weeks. It was confirmed that in the interval the pending proceedings did not prohibit the passing of other contracts before the Court in relation to the subject matter of these proceedings. We now set out our reasons for these decisions to convene parties to the Representations. It is convenient to issue a combined judgment because although the facts and reasons for the decisions are slightly different, similar issues arise. We emphasise that, because the Court has made a number of rectification orders in the past, the procedure to be followed in representations of this kind will call for a precise examination of what it is that has gone wrong and what is needed to put it right. The Chapman Representation 2. Mark Wayne Chapman ("Mr Chapman") acquired the property 2 Walmer Place, Hastings Road, St Helier, by Deed of Purchase passed on 11 th June 2021 from David Michael Peter McCullen Slater and Elizabeth Mary Slater, née Liccione, his wife. The vendors had title through a chain of contracts going back to the purchase of the property on 24 th July 1992 by one Jane Birbeck, née Price, from Linda Joy Le Boutillier (née Hooker), now Linda Joy Le Blancq ("Mrs Le Blancq"), Laura Joyce Hooker, née Fisher, and Lauren Carol De Gruchy, née Hooker. No difficulty arises in relation to the participation of Mrs Hooker and Mrs De Gruchy, but Mrs Le Blancq was represented by her attorney, Advocate David Fisher Le Quesne, pursuant to a Power of Attorney dated 23 rd July 1992. Unfortunately, that Power of Attorney was not registered until 27 th July 1992 and thus Advocate Le Quesne appeared in Court purportedly to pass a contract of sale under an unregistered Power of Attorney. The question has arisen as to whether this circumstance affects the contract of sale to Mrs Birbeck, and thus the whole chain of title. 3. It has not been argued before us that the failure to register the Power of Attorney was unimportant. By custom and tradition, no contracts are passed in Court other than by those who are transigeants unless they have granted a Power of Attorney to another person, registered in

the Public Registry, to pass the contract on their behalf. Such a Power of Attorney can be either a general power or a special power. The integrity of the Public Registry and thus the system of conveyancing in Jersey relies upon the accuracy of the deeds which are passed and recorded in the registry. In the absence of any argument to the contrary, we have proceeded, for the purposes of the present question, on the assumption, reflected by years of practice, that if a Power of Attorney is not registered in the Public Registry, there has been no proper authority for the attorney to take the oath on behalf of his or her constituent. 4. In the case of Mr Chapman, the evidence provided was an email purportedly from Mrs Le Blancq confirming that she agreed to the sale taking place in 1992 and authorised Advocate Le Quesne to pass the contract on her behalf. There are issues in relation to that email - it comes from an email address which does not in terms identify Mrs Le Blancq, and of course any sender of such an email could have endorsed it with the typescript 'Linda Le Blancq' at the foot. We have no hesitation in saying that it is not the type of evidence which Commissioner Clyde-Smith had in mind when the Representation was adjourned for a week. At the very least, one would have expected an affidavit from Mrs Le Blancq attesting to the matters in question. 5. However, the issue appears to us to be more complicated than that, not least because to make the order requested ex parte without convening anyone to it would seem to amount to permitting a conveyance of an interest in Jersey real estate by email. As was said in *Fogarty v St Martin's Cottage Limited* [2015]

- (1) JLR 356 at pages 369/370: "30. For many centuries, the structure of the laws affecting land and succession in Jersey was such that contracts of sale were relatively uncommon, but nonetheless it remains true that, from time immemorial, transactions in land have been completed by means of a contract sworn by the contracting parties before the Royal Court. Having confirmed with the parties that they are aware of the contents of the deed, the Bailiff (or the Deputy Bailiff or Lieutenant Bailiff) administers the oath to the contracting parties: 'Do you swear that you will neither act nor cause anyone to act against this Deed of [Sale of house, outbuildings and appurtenances] in perpetuity upon pain of perjury?' It is the act of taking that oath which completes the transaction in real estate and the Court then has the original contracts enrolled in the Public Registry where they are available for inspection by everyone. The original deed is then returned to the transacting party but has no intrinsic value. Accordingly, a person is able to ascertain the ownership of Jersey real estate by a check in the Public Registry of this island; and because the practice is to ensure that there is included within the contracts passed before the Royal Court a full description of the property which is the subject of the transaction, with its boundaries and servitudes affecting it, the Public Registry search establishes certainty for those who are transacting in other respects with the land owner in question..." 6. Although there are sometimes preliminary agreements of sale signed by the parties which commit them to complete a Deed of Sale before the Royal Court, the transfer of title is not effected under any deed or contract which is signed. It is effected by the swearing of the oath before the Royal Court when the contract is passed. In the case of the Deed of Sale by Mrs Le Blancq and others to Mrs Birbeck on 24th July 1992, the contract was never completed as far as Mrs Le Blancq is concerned. The oath was not validly taken because the Power of Attorney, applying the assumption set out

above, had not been registered. In our judgment, there is therefore no contract which could be rectified applying the usual rules regarding the rectification of deeds. 7. The Representation seeks endorsement of all the intervening contracts between that purportedly passed on 24 th July 1992 and the acquisition by Mr Chapman in June 2021. It is true, of course, that no party can acquire a better title than that which was available to the vendor to them. However, it would not lie in the mouth of any of the intervening parties in the chain of title to assert that they had not sold what they bought. Indeed the oath which they each took before the Royal Court was that they would not act against the deed in question. In our judgment therefore it is not necessary to convene all the intervening parties in the chain of title because none of them could be permitted to go against the terms of their oath in relation to the deed which they passed. 8. However, the position of Mrs Le Blancq is different. In our judgment, she should be convened to the Representation in order that, albeit belatedly, she can either personally or by an attorney complete the transaction which is reflected in the 1992 Deed of Sale or challenge it, in which case further directions would have to be given. We note that if the email did come from her, she is not minded to challenge the transaction. If she were to be joined into the proposed Deed of Sale of the property by Mr Chapman, which we understand has given rise to the present difficulties, in order to take the oath which was ineffectively taken on her behalf by Advocate Le Quesne in 1992, that will achieve the same result and the present proceedings could then be withdrawn. The So Representation 9. Similar issues arise in relation to this Representation. Mr and Mrs So purportedly acquired share number 1 and share number 8 in the Declaration of Co-Ownership of Cala d'Or Association from Mr Michael John Moretta on 24 th March 2017, thus giving title to an apartment and parking space in the property known as Cala d'Or. Mr Moretta had title from a Mr Alan Albert William Harper and Ursula Josephine Harper (née Smyth) ("Mr and Mrs Harper") by Contract of Purchase dated 2 nd November 2007. For the purposes of that contract, Mr and Mrs Harper were represented before the Royal Court by Valerie Jennifer Hutchins ("Mrs Hutchins"), purportedly pursuant to the terms of a Power of Attorney signed by Mr and Mrs Harper at St Helier, Jersey, on 25 th October 2007 and duly registered in the Public Registry. The Power of Attorney was a Special Power of Attorney and it was executed correctly. It gave the attorney power 'to sell the property known as Apartment 1, 14 Royal Crescent'. It omitted the power to sell the parking space. 10. The issue which arises therefore is that the oath that was taken by Mrs Hutchins on behalf of Mr and Mrs Harper was to sell both an apartment and a parking space in circumstances where she was only authorised to sell the apartment. The correct oath was taken, but the Power of Attorney was inadequate for its purpose. 11. In the evidence which was put before us, Advocate Habin confirmed that he was instructed in relation to the sale of both the apartment and the parking space. That does not seem to us to be sufficient of itself, because the Power of Attorney, registered in the Public Registry, is a statement to all the world of what Mr and Mrs Harper authorised, which may or may not be the same as Advocate Habin's understanding of the instructions which he had received. 12. In effect, what is therefore needed is a rectification of the Power of Attorney, but we do not have Mr and Mrs Harper before us to do so and it would not be appropriate to rectify the nature of the authority

which they gave to Mrs Hutchins to pass the contract without convening them. For that reason, the Court has ordered Mr and Mrs Harper to be convened. Once again, this would not prevent Mr and Mrs Harper being joined into a sale of the apartment and parking space by Mr and Mrs So to confirm the sale of the parking space by the contract of 2 nd November 2007. It is not necessary to convene Mr Moretta because, as with those in the chain of title in the Chapman Representation, he cannot be heard to complain about a Deed of Sale in relation to a property which he believed he had validly purchased, both because of the taking of the oath and indeed the application of the doctrine that one cannot reject that which one has approved, conveniently summarised in the Latin maxim *reprobo non approbo* . 13. This judgment sets out the detailed reasons for the decisions which were taken on 13 th May to convene Mrs Le Blancq to the Chapman representation and Mr and Mrs Harper to the So representation. By it we emphasise the importance of accuracy in the preparation of deeds which are to be presented to the Court for registry in the Public Registry. Authorities *Fogarty v St Martin's Cottage Limited* [2015]

- (1) JLR 356. Page Last Updated: 30 Jun 2022 Back to top About JLJB Accessibility Contacts Disclaimer Feedback Privacy policy Site map © Jersey Legal Information Board 2001- This website is not compatible with your web browser. You should install a newer browser . If you live in Jersey and need help upgrading call the States of Jersey web team on 440099. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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