

JERSEY / JUDGMENT

Yates -v- Reg's Skips [2008]

JRC 088 (03 June 2008)

[2008] JRC 088

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judgment

bailiff: 1. This is an application for costs by the plaintiffs following a judgment delivered by the Court on 11th December 2007 when a finding of a breach of the duty of voisinage was made. The plaintiffs succeeded in their action, and the Court granted an injunction preventing the defendant company from operating its skip business at or in the immediate vicinity of Heatherbrae Farm, such injunction to take effect on 1st May 2008. That date was subsequently extended by the grant of a limited stay so as to enable the defendant to pursue an appeal to the Court of Appeal. The appeal has now been dismissed. 2. Mr Lakeman for the defendant realistically accepted that costs must follow the event, and that the plaintiffs were entitled to their costs on the standard basis. He sought a contribution, however, from the Minister for Planning and the Environment ("the Minister"), the Minister having been convened by an order made by the Court of its own motion on 20th December 2007. Counsel for the defendant submitted that the Minister should be ordered to pay fifty percent of the plaintiffs' costs. 3. The jurisdiction to order a non-party to pay costs is not in dispute. Article 2 of the Civil Proceedings (Jersey) Law 1956 provides, so far as relevant, that "the costs of and incidental to all proceedings in the Royal Court shall be in the discretion of the Court and the Court shall have full power to determine by whom and to what extent the costs are to be paid." 4. This statutory provision was considered by the Court in *Drake v Gouveia* and another

[2000] JLR 411 where the former advocates of the appellants were ordered to pay all the costs of an abortive action. The Court stated:- "In our judgment, the principles laid down in *Aiden Shipping* and *Gupta* are equally applicable in Jersey. The words 'by whom' in art. 2(1) of the Civil Procedure (Jersey) Law are wide enough to embrace any non-party whom the Court, in the exercise of its discretion, considers ought justly to be ordered to pay the costs. No doubt this is a jurisdiction which ought to be exercised sparingly and with caution. Nonetheless, particularly in these days, when the costs of litigation threaten to make the courts inaccessible in practice to sections of the community, it is a power which the court should use in appropriate circumstances in order to ensure that litigants are not unfairly treated." 5. Mr Pallot, who appeared for the Minister, invited me to consider a passage from the *Aiden Shipping* case cited in a judgment of the English Court of Appeal

in *Symphony Group PLC v Hodgson*

[1993] 4 All ER 143 at 151; Lord Goff had stated: - "In the vast majority of cases, it would no doubt be unjust to make an award of costs against a person who is not a party to the relevant proceedings... I do not, for my part, foresee any injustice flowing from the abandonment of that implied limitation. Courts of first instance are, I believe, well capable of exercising their discretion under the statute in accordance with reason and justice. I cannot imagine any case arising in which some order of costs is made, in the exercise of the court's discretion, against some person who has no connection with the proceedings in question. If any problem arises, the Court of Appeal can lay down principles for the guidance of judges of first instance; or the Supreme Court Rule Committee can propose amendments to the Rules of the Supreme Court for the purpose of controlling the exercise of the statutory power vested in judges subject to rules of court." It is to be noted that this Court in *Drake v Gouveia* expressly approved the principles laid down in *Aiden Shipping*. 6. Mr Pallot submitted that an order against a non-party was exceptional and that the Minister had no real connection with the action or, at the lowest, no sufficient nexus to justify the making of an order for costs against him. 7. The starting point from which the defendant's application falls to be considered is the following passage from paragraph 3 of the Courts judgment where it was stated:- "It follows that, in our judgement, the activities of the defendant company at Heatherbrae Farm constitute a breach of the duty of voisinage which is owed to the plaintiffs. We reached this conclusion not without considerable sympathy for Mr and Mrs Pinel. They were permitted, if not encouraged, by the Planning Department, to establish their business at Heatherbrae Farm which they did in good faith. The difficulty is that any skip operating business is inherently noisy." 8. The relevant planning history may be summarised briefly as follows. The defendant had been operating its business in breach of the Planning Law at premises known as "La Prairie" in St Peter in that the site was being used not merely for storage but also for sorting the skips. Whether the sorting was taking place by hand or mechanically has not been resolved. The enforcement section of the Planning Department told the defendant that it would have to find another site. In August 2004 the defendant applied to change the use of premises at St John with a view to moving its business there. That application was refused on the ground that the sorting of skips would be detrimental to the amenities of neighbouring properties. The defendant then sought pre-application advice from the Planning Department in relation to Heatherbrae Farm. The company was invited to submit an application which was in fact eventually submitted by the owner of Heatherbrae Farm. The application was granted in May 2005 subject to a condition, inter alia, that "the use of the site shall operate in the same way as the current site as a skip sorting yard only and for no other purpose". 9. It is not in dispute that the phrase "in the same way as the current site [ie La Prairie]" is ambiguous and incapable of enforcement in that insufficient evidence exists as to the nature and mode of operation of the business at La Prairie. The Minister attempted to prevent the use of mechanical sorting at Heatherbrae Farm by an enforcement notice but he was eventually obliged to concede that the notice could not be sustained. The Minister,

through his Department, has conceded (in effect) that the business conducted by the defendant at Heatherbrae Farm causes a noise nuisance to neighbouring occupiers. Had this state of affairs been anticipated by the Department, planning permission would not have been granted to the owners of Heatherbrae Farm. 10. I have been greatly assisted by a candid and very proper assessment of the actions of the Planning Department by Mr Peter Le Gresley, an Assistant Director of Planning. It is clear that the activities of companies such as the defendant are difficult to place. The business of sorting skips, particularly mechanically, inevitably causes noise and dust. The Planning Department did not anticipate the effects upon the plaintiffs of permitting the defendant to operate at Heatherbrae Farm, but in my judgement, it should have done so. It was aware of the potential damage to neighbours by such operations. The Department did not take advice, as it should have done, from the Environmental Health Department, which would have counselled against the granting of planning permission. Although this is of only tangential relevance, the condition attached to the planning permission was so imprecise that it was incapable of enforcement. 11. It is true that the primary responsibility for the breach of the duty of voisinage lies with the defendant. It seems to me, however, that the Minister must bear some responsibility for encouraging the defendant to move its business to a site where it ought to have been foreseen that such a breach would ensue. Balancing all the factors as best I can, I make the following order. The defendant will pay the costs of the plaintiffs on the standard basis, but will be entitled to recover twenty-five percent of those costs from the Minister. 12. So far as the costs of the plaintiffs of and incidental to the costs application are concerned, I order that they be paid on the same basis and that the defendant be entitled to recover twenty-five percent of those costs from the Minister. As between the defendant and the Minister, I am minded to order that the Minister pay the defendant's costs on the standard basis, but I am willing to hear argument in that respect. *Au thorities Civil Proceedings (Jersey) Law 1956. Drake v Gouveia and another*

[2000] JLR 411 . Aiden Shipping Co. Ltd. -v- Interbulk Ltd [1986] A. C. 65. Symphony Group PLC v Hodgson [1993] 4 A11 ER 143 at 151. Page Last Updated: 22 Jul 2016 BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII

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