



Neutral Citation Number: [2023] EWHC 1200 (Ch)

Case No: PT-2022-CDF-000028

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURT IN WALES**  
**PROPERTY TRUST AND PROBATE LIST (ChD)**

Cardiff Civil and Family Justice Centre  
2 Park Street, Cardiff CF10 1ET

Date: 19/05/2023

**Before :**

**HIS HONOUR JUDGE JARMAN KC**

Sitting as a judge of the High Court

**Between :**

**NICHOLAS KOSSODO WEAVER**

**Claimant**

**- and -**

**DEBORAH SMITH**

**Defendant**

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**Mr Owen Curry** (instructed by **Guy Clapham & Co**) for the **claimant**  
**Mr Alex Troup KC** (instructed by **Welch & Co Cyfreithwyr Solicitors**) for the **defendant**

Hearing dates: 2-4 May 2023  
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**Approved Judgment**

This judgment was handed down remotely at 2pm on 19 May 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**HIS HONOUR JUDGE JARMAN KC**

**HHJ JARMAN KC:**

*Introduction*

1. The parties own neighbouring dwellings and land respectively known as Cwmclydach and Blaenclydach, Llywel, Brecon, Powys. They are in dispute as to whether on the true construction of a deed of easement dated 8 October 2015 (the deed), made between the claimant Mr Weaver, and the predecessors in title of the defendant Ms Smith, a right of way leading from the former to the latter continues to an unclassified highway to the west, as Mr Weaver claims, or it stops several meters short of the highway, as Ms Smith claims. If the latter is the correct construction, then in the alternative Mr Weaver claims that the deed should be rectified to make that connection.
2. Ms Smith's predecessors in title are cousins Cynthia Williams and Islwyn Williams who entered into the deed as the executors of their late uncle Islwyn Thomas, who had farmed at Blaenclydach for many years prior to his death. Mr Weaver bought the old farmhouse at Cwmclydach in 1975. When Blaenclydach was being sold after Mr Thomas's death, Mr Weaver spoke to the solicitor acting in the sale, James Anderson of Jeffreys and Powell, Brecon, about a right of way that he claimed over Blaenclydach land. Mr Anderson thought that a deed would be sensible and sent letters to his client about this, but received no reply. In that event he suggested to Mr Weaver that he should consult his own solicitor, which he did, and instructed James Thomson.
3. There are some factual issues surrounding the execution of the deed by the executors, to which I may have to return later in this judgment when considering the issue of rectification. For the purposes of construing the deed, however, all that needs to be said about that is that each of them accept that they did sign the deed.

*The deed*

4. The deed is professionally drawn by Mr Anderson, and Mr Weaver's signature is witnessed by Mr Thomson. The parties are referred to as the grantee and the grantor respectively and their respective properties as such. In the recitals, it is said that the executors have agreed to confirm the rights as defined in the deed to Mr Weaver for the benefit of Cwmclydach on the terms contained in the deed.
5. The rights granted in clause 3.1 are set out in schedule 1 as follows:
  - “1. The right for the Grantee and its successors in title and those authorised by it all them to pass with or without private vehicles over and along the Accessway at all times to gain access to and egress from the Grantee's Property for all purposes connected with the use of the Grantee's Property as a private residential dwelling but not for any other purpose.
  2. The right to enter onto the accessway with vehicles and machinery for the purpose of making good the surface of the

Accessway so as to accommodate the rights granted in the preceding paragraph.”

6. The accessway is defined in the interpretation clause of the deed at 1.1 in this way:

“Accessway: the access way forming part of the Grantor’s Property which passes between the points marked A and C on the Plan and that is no more than 12 feet wide (it being acknowledged by the parties that the width of the existing gates at the points marked A B and C on the Plan where they cross the Accessway determines the width of the Accessway at those points ) the approximate route of which is shown coloured yellow on the Plan.”

7. The plan is defined as the plan annexed thereto. That is based on the Ordnance Survey map with a scale of 1:2500. It shows and names each of the properties referred to, and the boundary between them which follows the Nant Clydach, or Clydach Brook. Point C is marked at the boundary, where there is a gate and a bridge over the brook. Point B is close to a gate to the west into a small grassed enclosure forming part of Blaenclydach. Point A is marked adjacent to a gate leading from that enclosure to a hard surface yard in front of outbuildings at Blaenclydach. Point A is positioned on the yard, about half way between the adjacent gate and the highway.
8. To the south of the yard there is a concrete apron adjacent to the farmhouse at Blaenclydach. There is also shown a road with two dashed lines leading to the farmhouse and then to the north, which is the unclassified highway in question. This has been tarmacked since at least 1964, when the local highway authority sought a Ministry of Agriculture grant to do so. The yellow colouring follows a route shown edged with two continuous black lines and a dashed line in between from point C to point B, and then continuing over the grassed enclosure near to point A. The local highway authority in the 1960s or 1970s laid the yard with grey hardstone and built walls to retain the bank on which the highway runs, by way of accommodation works.
9. By clause 2, in consideration of the grant of the rights, Mr Weaver surrendered to the executors “all rights of access whatsoever and howsoever arising” in relation to Blaenclydach “with the intention that those rights of access shall cease and be extinguished from the date hereof.” By paragraph 5 of schedule 2, Mr Weaver covenanted to “close the gates at the points marked A B and C on the Plan every time after [he] uses the gates.”
10. The deed was then registered on the registered title of the respective properties at HM Land Registry. In the charges register of Blaenclydach, it is noted that the land is subject to any rights that are reserved by the deed. In the property register for Cwmclydach it is noted that the property has the benefit of any easement under the deed.
11. Mr Curry for Mr Weaver submits that although the yellow colouring stops at the gate adjacent to point A, and although point A on the plan is shown on the yard and not at the highway, a reasonable reader of the deed would say that the clear intention was to give access to and egress from Cwmclydach over the yard at Blaenclydach to the

adjacent highway. Mr Troup KC for Ms Smith submits that the rights granted are to the gate at point A and not over the yard to the highway.

*The principles of construction*

12. The principles of construction applicable to the deed were not in dispute before me and can be shortly stated. There have been helpfully summarised by Carr LJ in the recent case of *ABC Electrification Limited v Network Rail Infrastructure Limited* [2020] EWCA Civ 1645 at paragraph 18 as follows, after a review of Supreme Court and other authorities:

“i) When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. It does so by focussing on the meaning of the relevant words in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the contract, (iii) the overall purpose of the clause and the contract, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions;

ii) The reliance placed in some cases on commercial common sense and surrounding circumstances should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision;”

iii) When it comes to considering the centrally relevant words to be interpreted, the clearer the natural meaning, the more difficult it is to justify departing from it. The less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning;

iv) Commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made;

v) While commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should have agreed. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party;

vi) When interpreting a contractual provision, one can only take into account facts or circumstances which existed at the time the contract was made, and which were known or reasonably available to both parties.”

13. Carr LJ concluded her review at paragraph 19 as follows:

“19. Thus the court is concerned to identify the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean. The court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. This is not a literalist exercise; the court must consider the contract as a whole and, depending on the nature, formality, and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching its view as to that objective meaning. The interpretative exercise is a unitary one involving an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences investigated.”

14. Regard must also be had in the present case to the fact that the deed was registered, as intended. This impacts upon the extent to which a reasonable reader might have recourse to other matters not referred to on the register, see *Cherry Tree Investments v Landmain Ltd* [2013] Ch 305 and *British Malleable Iron v Revelan (IOM) Ltd* [2013] EWHC 1954. In the former case, Lewison LJ, giving the lead majority judgment, observed at paragraph 107 that the fundamental objective of the Land Registration Act 2002 was that the register should be a complete and accurate reflection of the

state of the title of the land at any given time, so that it is possible to investigate title to land on line, “with the absolute minimum of additional enquiries and inspections.”

15. At paragraph 130, Lewison LJ continued thus:

“130. In my judgment this is the key to the present case. The reasonable reader's background knowledge would, of course, include the knowledge that the charge would be registered in a publicly accessible register upon which third parties might be expected to rely. In other words a publicly registered document is addressed to anyone who wishes to inspect it. His knowledge would include the knowledge that in so far as documents or copy documents were retained by the registrar they were to be taken as containing all material terms, and that a person inspecting the register could not call for originals. The reasonable reader would also understand that the parties had a choice about what they put into the public domain and what they kept private. He would conclude that matters which the parties chose to keep private should not influence the parts of the bargain that they chose to make public. There is, in my judgment, a real difference between allowing the physical features of the land in question to influence the interpretation of a transfer or conveyance (which we do) and allowing the terms of collateral documents to do the same (which we should not). Land is (almost) invariably registered with general boundaries only, so the register is not conclusive about the precise boundaries of what is transferred. Moreover, physical features are, after all, capable of being seen by anyone contemplating dealing with the land and who takes the trouble to inspect. But a third party contemplating dealing with the land has no access to collateral documents.”

*The proper construction of the deed*

16. In my judgment the search for the proper meaning of the deed should commence by having regard to the words which the parties chose to use in the deed in the context of the physical features on the land affected at the time. Mr Curry and Mr Troup KC pointed to various phrases used in the deed and various features of the land to support their respective cases.
17. The important points, in my judgment, are these. The reference to “accessway” in schedule 1 of the deed is a strong indication that the parties intended that the right would give access to Cwmclydach as a private residential dwelling. This is reinforced by the purpose of the accessway, which was “to gain access to and egress from” that property. It is straining the ordinary meaning of those words that such access or egress would only be to the gate at point A or to a point halfway across the yard at Blaencydach but not to the highway at the end of the yard.
18. When reference is made to the definition of accessway, again the word accessway is used. However, the accessway is then said to run between points marked A and C on the plan. There is then a reference to the width of the existing gates at the points

marked A B and C on the plan. That strongly indicates a connection between those points and the gates, but the reference to “at the points” suggests a closeness rather than the gates being upon the exact spot where the letters A B and C are marked. That the yellow colouring stops at the gate at point A is another indication that the right of way was intended to stop at that gate, although it is not a strong indication because the marking is said to show the approximate route. In my judgment, the reference to the gates “crossing” the accessway does not take the matter very much further and the reference is in the context of setting out the width of the accessway. Taking this definition, in my judgment Mr Curry is right to concede that that favours Ms Smith’s interpretation.

19. However, the whole of the deed must be considered. The deed in paragraph 5.1 of schedule 2 clearly contemplates, in my judgment, that the grantee will use the gate at point A as there is a covenant to close it after use. The ordinary meaning of the word “use” in respect of a gate is to open it to go through it, rather than to open it but not to go through it, or to go through it but only to a point halfway across the yard at Blaenclydach rather to the highway at the other end of the yard.
20. In my judgment, a reasonable reader of the deed would find it surprising if that parties had gone to the trouble to execute a professionally drawn deed to give a right of access and egress from and to only the gate at point A, or a point halfway across the yard. The answer of Mr Troup KC is that the reasonable reader might well assume that there was some private arrangement in respect of the use of the yard to access the highway. However, in my judgment the reasonable reader would still find that surprising. Why would the parties go the trouble of executing a deed establishing a right of way to point A only, and to deal with access from point A to the highway by way of an undocumented arrangement? Moreover, clause 2 means that at the moment of execution, Mr Weaver surrendered all rights of access whatsoever in relation to Blaenclydach. If the arrangement gave rise to such a right, it would be surrendered. If it did not, it could have been withdrawn at any time.
21. Having regard to the wording of the deed as a whole in the context of the physical features on the ground at the time of execution, in my judgment a reasonable reader would conclude that the parties intended the right granted to give access from the highway to Cwmclydach and egress therefrom to the highway for all purposes connected with the use of that property as a private residential dwelling.
22. In my judgment it is not necessary in reaching that conclusion to have regard to other matters dealt with by counsel. On the proper construction of the deed there was no obvious defect that the right granted did not connect with the highway. Other matters included the conveyance of Cwmclydach to Mr Weaver in 1975 which included the benefit of “such a right of way over” Blaenclydach as had been enjoyed. Leading up to the sale, a statutory declaration had been signed by David Gwyn Jones, whose parents had farmed and occupied Cwmclydach since 1929, and Mr Jones declared that during that the time, Cwmclydach had used a right of way with or without vehicles across Blaenclydach to the “public road.” In my judgment, it is unnecessary to have regard to those documents or to highway authority documents showing the precise line of the highway adjacent to the yard.
23. There was also reference to a deed which Mr Weaver entered into with a neighbouring landowner to the east of Cwmclydach, which gives him a right of way

over a similar non metalled route over that land to another highway. Mr Weaver's evidence on this, which I accept, is that there are problems with the surface of that route and the landowner disputes the extent to which Mr Weaver is entitled to bring the surface up to a standard passable with vehicles. In my judgment that does not impact upon the proper construction of the deed with which I am concerned.

*The alternative claim to rectification- issues of fact*

24. There are issues of fact in relation to the alternative claim of rectification, which, in case I am wrong as a matter of construction, I ought to deal with. Mr Anderson and Mr Weaver gave oral evidence in court, as did Ms Smith. On her behalf Islwyn Williams, and Michael Williams, who was a stockman for Mr Thomas and lived at Blaenclydach for many years, were also called to give evidence. Cynthia Williams gave evidence by video because of poor health, as did her husband. Ms Smith's predecessors Malcom Tucker (also by video) and John Poulson gave brief oral evidence.
25. Mr Weaver's evidence was that after his purchase of Cwmclydach, he continued to work and live away from the area for some years. The dwelling there was in poor condition and in particular needed a new roof. His contractors, who also did work for Mr Thomas, parked at Blaenclydach, and carried materials down the accessway. He himself agreed with Mr Thomas that he could park his car on the concrete apron there and he then walked down the accessway. He would very occasionally drive down in dry summers, but that was no more than 5 times every year.
26. Islwyn and Cynthia Williams stayed with Mr Thomas at Blaenclydach during school holidays and visited occasionally thereafter. Neither could remember any use being made by or on behalf of Mr Weaver of the accessway, which in my judgment is not surprising given their occasional visits and the occasional use made. Michael Williams does recall that Mr Weaver used to park his car on the concrete apron and then walk down the accessway but said that he was told by Mr Thomas after a couple of years that he was fed up Mr Weaver's car obstructing the apron and told him to stop. Mr Weaver denied this happened and said that this arrangement carried on for years until he negotiated the 2004 deed when he made up the alternative route and it was possible for a car to pass. However, this has now deteriorated because of the dispute as to his right to make up the surface.
27. In my judgment Mr Weaver gave his evidence as to use of the accessway in a straightforward manner. At one point in cross-examination, when Mr Troup KC suggested that vehicular use might have been as little as six times a year, Mr Weaver replied that it was less than that. I prefer his recollection as the use of the accessway to that of the defence witnesses.
28. Mr Weaver accepts that when he learnt of the proposed sale of Blaenclydach, he approached Mr Anderson, who had previously acted for him but who was now acting for the executors. Mr Weaver was concerned about his position regarding use of the accessway after the sale and it was Mr Anderson who suggested a deed. In cross examination, he said this was because it was good conveyance practice so to ensure that it was clear as part of the sale. He wrote to both of his clients, but received no reply. By an email dated 4 September 2015, he suggested to Mr Weaver that his right of way currently existed "through the yard" and that to gain vehicular access through



the yard past the retaining walls, there might be a need to take “a wider swing through the yard.” However, he did not think it was reasonable to construct an access in the field behind the outbuildings as Mr Weaver was suggesting.

29. Mr Anderson also suggested that because of the risk of a conflict, that Mr Weaver should instruct his own solicitor, and he instructed Mr Thomson. In an email to his solicitor on 11 September, Mr Weaver indicated that the right of way he was claiming was “through the yard to join the road maintained by the Council which ends in the upper part of the yard.”
30. Eventually, when Mr Anderson was able to take his clients’ instructions, it appeared that they were reluctant to enter into a deed, as their stance was that the accessway had not been used. Mr Weaver, in order to persuade them and because the retaining walls made it difficult to negotiate access to the highway with larger vehicles, offered to alter the route so as to go behind the outbuildings to the highway, rather than over the yard, and spoke to Islwyn Williams about it. Mr Anderson sketched a rough plan of the route.
31. On 15 September, Mr Thomson emailed Mr Anderson for confirmation that a right of way could be documented, to which the latter replied asking what rights Mr Weaver was looking to document. The response referred to the rights as existing “(ie a right of way from the road through the yard to the brook...)”
32. By letters dated 17 September, Mr Anderson wrote to each of his clients confirming that Mr Weaver’s solicitor had asked for a right of way to be documented, “only the right of way through the yard which is not particularly viable.” He enclosed a plan showing the existing access, and noted that Mr Weaver seemed to have abandoned the idea of taking the right of way behind the outbuilding, and was “simply seeking to document the access as per the previous Statutory Declaration.” He continued that what was important was that the purchaser did not have a problem with it, and that, subject to their instructions, Mr Weaver would pay the costs of doing so.
33. When Mr Tucker’s solicitors became involved, Mr Anderson engaged with them to see if he would be happy to purchase with a deed giving access to Cwmclydach from the highway, and when it looked as if he would, he again took his clients instructions.
34. There is an attendance note dated 21 September 2015 by Mr Anderson showing that he attended on Cynthia Williams discussing progress “with Weaver” and confirming that he had spoken to Islwyn Williams regarding the same “who did not seem to have any objection regarding documenting the rights of access.” He dealt mainly with Cynthia Williams. He recalls a conversation with her to the effect that as long as the purchaser was happy with a deed of easement, then so was she. He accepts there is no note to that effect, and it is something which she says did not happen.
35. By further letters to them on 6 October he confirmed that Mr Tucker was happy with the deed. There was then an issue with the width of the accessway and by an attendance note on Cynthia Williams saying that this issue had been resolved and she would need to come back to “resign” the deed. On 8 October Mr Anderson attended on each of his clients and in a note confirmed that he had gone through the documentation including the deed with each before asking them to sign. In cross-examination, he said that he did not go through this line by line with them but

explained to each of them that the deed was to confirm the rights in Mr Jones' statutory declaration. He recalled that each wanted to complete the sale, as each of them benefitted under Mr Thomas's estate.

36. Cynthia Williams in cross examination said that she did not remember talking to Mr Anderson about the deed or the right of way. She didn't remember signing the deed. She accepted that she was going to benefit from the sale and wanted to sell quickly for the best price possible. She said she wouldn't be happy with a right of way as there wasn't one. She added that Mr Anderson didn't explain anything to her, but just asked her to sign documents, although she did accept that he told her that Mr Tucker was happy about everything. Towards the end of her cross-examination when it was put to her that she was happy as long as Mr Tucker was happy, she agreed. Her husband gave evidence in similar vein.
37. Islwyn Williams accepts that he received Mr Anderson's letters saying that Mr Weaver wanted a right of way. He thought it was impractical for a car to turn down the yard. He accepted that it was up to Mr Tucker to decide whether he wanted this right of way and could say "yea or nay" and that he would be happy if Mr Tucker said yes. However, he too maintained that Mr Anderson did not explain the deed and was surprised when he saw his letter the day after completion referring to it. He said that then he thought the sale had completed and that was it, so he didn't bother taking this matter up.
38. When Mr Tucker gave his evidence, and his solicitor's letter saying that he had no issue with the right of way was put to him, he said that his solicitor did not write this on his instruction. The first he knew of a right of way was on the day he signed the contract, when it came as a shock. He said that his solicitor told him the right of way had never been used and was never likely to be used and to ignore it "as if not there." He said that he was not really happy, but had already moved his cattle there so he felt committed.
39. The evidence from Cynthia Williams, her husband, Islwyn Williams and Mr Tucker about not being told about the deed by their respective solicitors (or in the latter case until it was in effect too late) is surprising. There is no suggestion of collusion between these witnesses. However, their evidence respectively is at odds with the contemporary documents, which support most, although not all, of Mr Anderson's evidence. Moreover it is inherently unlikely that he obtained his clients' signatures on the deed without taking their instructions on it or explaining the import of it. It is similarly unlikely that Mr Tucker's solicitor should tell him that the right was unlikely to be used and to ignore the deed when it expressly granted the right to enter the accessway to make good the surface so as to accommodate the rights granted.
40. It is clear from the contemporaneous documents that there was some urgency in getting the deed agreed in the days before completion so that there would be no delay, and it is not in dispute that the executors were eager to complete the sale and to benefit from their inheritance. It is more likely that Mr Anderson's recollection is accurate on these disputed matters, given the support given by the contemporaneous documents and inherent likelihoods. I accept that he told his clients before they signed the deed that it was to confirm the rights set out in the statutory declaration of Mr Jones. That made it clear that the right claimed was to the public road.

*Principles of rectification*

41. The principles of rectification as applied to the facts as so found were not in dispute before me. They were “succinctly summarised” by Peter Gibson LJ in *Swainland Builders Ltd v. Freehold Properties Ltd* [2002] 2 EGLR 71, 74 as follows:

“The party seeking rectification must show that: (1) the parties had a common continuing intention, whether or not amounting to an agreement, in respect of a particular matter in the instrument to be rectified; (2) there was an outward expression of accord; (3) the intention continued at the time of the execution of the instrument sought to be rectified; (4) by mistake, the instrument did not reflect that common intention.”

42. In *FSHC Group Holdings Ltd v. Glas Trust Corp Ltd* [2020] Ch 365, Leggatt LJ, as he then was, giving the lead judgment of the Court of Appeal, undertook an extensive review of the development of the principles of rectification. He cited Hodge on Rectification, 2<sup>nd</sup> edition (2016), at paragraph 3-81, that the law of rectification “is over-complicated, unpredictable in its outcome, capable of producing unacceptable consequences, and creates confusion between cases of common and unilateral mistake.”

43. After citing many authorities, Leggatt LJ said this at paragraph 140:

“The justification for rectifying a contractual document to conform to a 'continuing common intention' is therefore not to be found in the principle that agreements (as objectively determined) must be kept. It lies elsewhere. It rests on the equitable doctrine that a party will not be allowed to enforce the terms of a written contract, objectively ascertained, when to do so is against conscience because it is inconsistent with what both parties in fact intended (and mutually understood each other to intend) those terms to be when the document was executed. This basis for rectification is entirely concerned with the parties' subjective states of mind. The underlying moral principle can be characterised, to adopt Lord Hoffmann's analysis, as being that persons who make a contract have to observe certain standards of good faith.”

*Conclusions*

44. It follows from the findings of fact made above that I am satisfied that at the time of execution the deed it was intended by Mr Weaver and each of the executors that the rights granted should extend over the yard to the highway. Moreover, it is clear from the correspondence passing between their respective solicitors in the weeks leading to completion of the sale and signature of the deed, that that is what they mutually understood each other to intend. If, contrary to my conclusion on the proper construction of the deed, it does not make that connection, then it ought to be rectified to do so.

45. In conclusion, the claim succeeds. Mr Weaver is entitled to a declaration that upon its proper construction, the rights granted by the deed continue through the gate at point A on the plan, through the yard at Blaenclydach to the highway at the upper end of the yard. The parties sought and obtained expert evidence as to what sort of vehicle may be able to negotiate that part of the route having regard to the retaining walls. Both experts concluded that normal sized cars could potentially use the easement, although it needs repairs currently.
  
46. By his claim, Mr Weaver seeks injunctive relief and damages, but these were not dealt with in any detail in cross-examination or in submissions. Counsel helpfully indicated that upon hand down of this judgment, any consequential matters which cannot be agreed, may be dealt with on the basis of written submissions. Any such submissions, together with a draft order agreed as far as possible, should be filed within 14 days of hand down. I am grateful to each for their focussed yet thorough presentation of their respective cases.