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IN THE ROYAL COURT OF JERSEY

Before: V.A. Tomes, Esq., Deputy Bailiff
Jurat H. Perree
Jurat P.F. Misson

Between:	**J.P.S. Properties Limited**	Plaintiff
And:	**David Cole Investments Limited**	Defendant

Advocate S.J. Habin for the Plaintiff
Advocate S.C.K. Pallot for the Defendant

The Plaintiff is the owner of a property being No. 17, Britannia Place, Bath Street, in the Parish of St. Helier, to which it has a right by purchase in perpetuity by a contract passed before the Royal Court on the 10th May, 1985, from the limited liability company called J & G (Property) Limited.

The Plaintiff has leased the premises to the Defendant for a term of 21 years by contract passed before the Royal Court on the 24th May, 1985.

The Defendant covenanted in the said lease, inter alia, "2(m) ..... not to use or permit or suffer to be used any portion of the demised premises or anything connected therewith as an advertising station or for the display (other than trade notices displayed in the interior of the demised premises) of boards, posters, notices or signs and not to affix, paint or exhibit or suffer to be affixed, painted or exhibited on the exterior of the demised premises or from any window thereof, any flag, signboard, placard, poster, advertisement or show of business whatsoever, except such notices or signs as may be permitted and approved in writing by the Landlord....."

"2(y) to conform to all clauses, conditions and restrictions by which the landlord may be bound in respect of the demised premises".

AND:

A LA CHARGE à ladite Société Preneuse et à ses successeurs de se conformer pendant la durée du present bail à termage à toutes les clauses, conditions et restrictions auxquelles ladite Societe Bailleresse pouvait être assujettie pour

et à cause de ladite propriété presentement baillée à termage à laquelle elle avait droit par acquêt héréditaire par contrat en date du dix Mai, mil neuf cent quatre-vingt-cinq de ladite Societe "J. & G. (Property) Limited" laquelle fit construire ledit bâtiment ou bureau et appartenances présentement baillées à termage sur partie de ladite propriété à laquelle elle avait droit, entr'autres héritages, comme sus est dit, par acquêt héréditaire par ledit contrat en date dudit huit Juin, mil neuf cent septante-trois de ladite Société "St. Aubin's Motor Coach and Car Company Limited".

The said deed of purchase of the premises dated 10th May, 1985, contains, inter alia, the following clause, condition or restriction:-

"QUE, sauf comme est ci-après stipulé, ladite Société Acquéreuse ne fera jamais placer sur l'extérieur du bureau formant partie de ladite propriete présentement vendue aucunes affiches ou panneaux-réclames quelconques; etant entendu que ladite Société Acquéreuse aura le droit de placer sur le pilier en briques situé à l'Ouest de l'entrée principale dudit bureau formant partie de ladite propriété présentement vendue des plaques de cuivre jaune et d'aluminium et ce sur une partie seulement dudit pilier en briques laquelle partie dudit pilier n'excédera jamais une largeur de deux pieds royaux et une hauteur de trois pieds royaux; étant de plus entendu que ladite Société Acquéreuse aura le droit de placer des lettres en feuille d'or sur les verres à vitres des fenêtres et portes formant partie dudit bureau et que (de temps en temps) des affiches ou panneaux-réclames annonçant que ladite propriete presentement vendue ou partie d'icelle est à louer ou à vendre ne seront pas compris dans cette presente restriction".

The Plaintiff alleges that the Defendant has caused to be affixed two brass name-plates measuring approximately 1 ft. x 4 1/2 ins. to the pillar to the west of the more easterly entrance to the premises which it calls "the principal entrance to the premises", and has further caused to be affixed one brass name-plate measuring 2 ft. x 1 ft. 6 ins. and two brass name-plates measuring 1 ft. x 4 1/2 ins. to the wall to the west of the more westerly entrance of the premises which it calls "the entrance to the ground floor only of the premises".

In fact, when we viewed the premises we saw a third brass name-plate near the more easterly entrance bearing the name of Advocate Begg. No doubt it was not there at the time that the Order of Justice was prepared and is not relevant to the decision that we have to make.

The Plaintiff subsequently consented to the affixing of name-plates to the pillar to the west of the principal entrance to the premises provided that such name-plates were affixed to an area that did not exceed a width of 2 ft. and a height of 3 ft. in accordance with the restriction imposed upon the Plaintiff in its Contract of Purchase to which we have already referred.

The Plaintiff claims that the Defendant is in breach of its covenant by reason of the three plates situated on the curved facade or wall or pillar situated to the west of the more westerly entrance.

By agreement between the parties the Court has been asked only to construe the relevant clause in the Contract of Purchase of 10th May, 1985.

As to the law to be applied Mr. Habin referred us to Blackburn -v- Kempson, nee Johnson 1971, J.J. Vol. I Part III, 1747 at p.1756.

There the Court said this:-

"We summarise the general rules of interpretation of documents as follows: The object of all interpretation of a written instrument is to discover the intention of the author. That intention must be gathered from the instrument itself; the function of the Court, therefore, is to declare the meaning of what is written in the instrument, and not of what was intended to have been written. Prima facie, words must be taken in their ordinary sense but where words are susceptible to more than one meaning, assistance may be obtained from the context in which they appear, and Courts will give effect to that interpretation which appears to be most consistent with the intention of the parties to the instrument".

Mr. Pallot referred us to the case of Her Majesty's Viscount -v- Treanor

1969 J.J. Part 1 Vol.2, 1243 at p.1245 only for the purpose of the following short extract:-

"If, as we believe him to be, Pothier is a surer guide to the Jersey law of contract than are the English authorities....."

Mr. Pallot then quoted from an interesting book which was an English translation by the Louisiana State Law Institute of Planiol Traité Elémentaire de Droit Civil 1939 Edition and drew our attention to various passages in chapter 3. Interpretation of Contracts, paragraph 1181 Analysis of the Texts as follows:-

"The authors of the Code deemed it useful to formulate articles containing a certain number of principles which they could without inconvenience have allowed to remain as doctrinal rules. (see Arts.1156 to 1164). All those dispositions were copied from Pothier (Obligations Nos. 91 et seq.) where the best commentary can still be found. They do not raise any difficulty and are little used in practice: it will suffice to analyse some of the principal provisions".

"Improper Terms. One should seek for the common intention of the parties rather than stop at the literal meaning of terms".

"Ambiguous Clauses. With regard to these the law formulates several rules:

(1) One should first interpret them according to the usage in the place where the contract is passed (Art.1159).

(2) That which is susceptible of two meanings should be taken in the meaning which best suits the matter of the contract (Art.1158).

(3) If there are two equally suitable meanings, one should choose that by which the contract is susceptible of producing some effect, rather than that whereby it would produce none (Art.1157).

(4) Finally, in case of doubt the agreement is to be interpreted against the party who made the stipulation and in favour of the one who contracted the obligation (Art.1162).

"Incomplete Enunciations. The clauses which are usual in a contract should be supplied although they are not expressed (Art.1160). The law has already said something similar in Art.1135; a contract is binding in all its clauses

according to equity or usage. From this point of view, the usage of the place where the contract is made is the one to be consulted, and not that of localities more or less distant".

Mr. Pallot also quoted paragraph 1182. Liberty of Investigation of the Judge. "No text obliges the judge to confine himself to the written act to determine its meaning; he can, therefore, seek the intention of the parties either in other writings, or in the circumstances of the case".

Finally Mr. Pallot referred us to a foot note to paragraph 1182 as follows: "Just what is the role of the judge when he interprets a Contract? Most often he seeks what he believes to be the common intention of the parties; but often also, such common intention did not exist on the point in litigation, which had not been discussed by the parties, and as to which they perhaps would have had divergent opinions. The judge therefore starts with the consent expressed on the essential points, to draw from them the consequence which the contracting parties neither perceived nor desired. Does he violate the Contract? Not at all. The ideas are interlaced, and to admit a principle is to admit its consequences".

Mr. Pallot also referred us to Dalloz 1859 edition, vol.XL at paragraph 1002 as follows:-

"Interprétation du titre. Les tribunaux ont une grande latitude, en matière d'interprétation. Il serait donc difficile de donner des règles rigoureusement exactes sur les principes qui les dirigent, et que l'équité quelquefois domine plutôt que la rigueur du droit, nous croyons donc devoir nous borner à énoncer rapidement diverses décisions utiles a connaître".

He also referred us to paragraph 1005 which reads as follows:-

"Le pouvoir des tribunaux s'étend même par voie d'interprétation sur les modifications que les engagements des contractants peuvent apporter au droit de propriété. Les art.544 et suiv. et l'art.686 laissent en effet toute latitude aux parties dans les conditions constitutives des servitudes. - C'est ainsi qu'il a été juge 1. que la convention par laquelle deux propriétaires

voisins s'interdisent réciproquement la faculté d'élever aucun bâtiment ni aucune construction, quelles qu'en soient la hauteur et la destination, dans une certaine zone, de chaque côté du mur séparatif de leurs héritages, peut, malgré la généralité de ses termes, être entendue en ce sens qu'elle a eu seulement pour but de ménager l'air et la lumiere aux constructions faites et à faire au delà de la zone prohibée; qu'en conséquence ces propriétaires conservent le droit de diviser leurs terrains par lots, d'y bâtir des maisons et de les clore au moyen de murs établis même dans la zone prohibée, mais à une hauteur inférieure à celle du mur séparatif - 2. Que le titre de propriétaire d'une usine, contemporain de l'époque où elle était banale, qui limite l'usage du cours d'eau artificiel sur lequel elle est située, à la destination qu'elle avait lors de l'acte, a pu être déclaré ne constituer, au profit du propriétaire, qu'un simple droit de servitude sur les eaux, et faire obstacle à ce que la destination primitive de l'usine soit changée....."

Mr. Pallot also quoted from another work which we do not believe has been quoted as an authority in Jersey previously. It was "Beraud et de Beauvrain sur mitoyenneté, clôtures, bordages et servitudes." They are distinguished French authors from Aix and the work is regarded as authoritative in France. Paragraph 141 at p.89 deals with the interpretation of titles and contains the following:-

"Il est peu instructif de remarquer qu'en matière d'interprétation des titres, plus généralement de conventions relatives à des servitudes, les juges jouissent d'un pouvoir souverain d'appréciation, d'après d'innombrables arrêts, sauf à ne pas dénaturer les actes. Ils ne sont pas liés - meme observation - par la lettre même des titres et recherchent l'intention certaine, réelle, des parties, pouvant la trouver dans des faits révélateurs, la situation des lieux, leur état, les besoins du fonds dominant (notamment à l'époque où la servitude a été constituée), la manière dont la servitude a été possédée, sans soulever de protestations, la pratique suivie et les usages du pays (art.1159 c.civ.).

Le doute doit jouer contre la servitude, les propriétés bénéficiant d'une présomption de liberté et la convention constitutive de servitude s'interprétant en faveur du fonds servant (art.1162 c.civ.). Il doit en résulter par exemple

qu'un lieu précis suffisant pour l'assiette de la totalité de la servitude, toutes les autres parties de l'héritage doivent en être déchargées, alors que la convention ne fixerait aucun point déterminé. La meme règle vaut relativement aux heures et autres "termes" d'exercice. En cas de conflit entre les titres, doit être retenu celui qui grève le moins le fonds servant".

We were invited to draw an analogy between the situation which exists in the present action and the situation described with regard to servitudes in the French authorities. We were invited to apply equity or fairness rather than "la rigueur de droit" and were urged that any opening is to be taken in favour of freedom of those who have contracted.

We do not consider that the authorities quoted add very much if at all to Pothier in his Traité des Obligations 1821 edition, Tome 1. at page 86. His "première régle" reads:-

"On doit, dans les conventions, rechercher quelle a été la commune intention des parties contractantes, plus que le sens grammatical des termes".

His second rule reads:-

"Lorsqu'une clause est susceptible de deux sens, on doit plutôt l'entendre dans celui dans lequel elle peut avoir quelque effet, que dans celui dans lequel elle n'en pourroit avoir aucun".

Rule three which is equally relevant, at p.87, reads:-

"Lorsque, dans un contrat, des termes sont susceptibles de deux sens, on doit les entendre dans le sens qui convient le plus à la nature du contrat".

Also relevant are the fourth, fifth, sixth and seventh rules at p.88 and 89 as follows:-

4. Ce qui peut paroître ambigu dans un contrat s'interprète par ce qui est d'usage dans le pays.

5. L'usage est d'une si grande autorité pour l'interprétation des conventions, qu'on sous-entend dans un contrat les clauses qui y sont d'usage, quoiqu'elles ne soient pas exprimées.

6. On doit interpréter une clause par les autres clauses contenues dans l'acte, soit qu'elles précèdent ou qu'elles suivent.

7. Dans le doute, une clause doit s'interpreter contre celui qui a stipule quelque chose, et a la decharge de celui qui a contracte l'obligation".

Matters similar to those in issue in the present case were dealt with by the Inferior Number in the action between Gerald Hedley Le Ruez, Plaintiff and Donald Syvret Le Ruez and Una Hubert de Caen, his wife, Defendants 1980 J.J. 229. There the then Deputy Bailiff, sitting alone, (at p.280) said this:-

"Because this action concerns a matter of law only I sat alone, and no evidence was tendered, although counsel outlined to me the circumstances which led to the passing of the Contract in order that I might understand the background to the action".

We equate the visit to the premises which we made with the outline of the circumstances which led to the passing of the Contract referred to by the learned Deputy Bailiff in that case.

The Court continued as follows:-

"The law in Jersey on the interpretation of Contracts is quite clear. In Hyams -v- Russell, 1 J.J. 1891, the Court said this at page 1910:-

"We agree that it is a fundamental principle of the law of contract that where there is a written agreement which has a plain natural meaning it is not permissible to alter its effect according to the intention of one of the two contracting parties, or to adduce evidence in order to show such an intention".

Secondly, in the case of de Botte -v- The National Insurance and Guarantee Corporation Ltd. 2 J.J. 157, the Court said this at page 162:-

"It is a well-established rule of the construction of documents that words must be construed in the context of the whole of the document in which they appear".

The only question is what have the parties said by their Contract. The relevant clause of the Contract does not clearly say to what the "entrée principale" is intended to refer. Nor does it sufficiently describe the "pilier en briques".

We are therefore entitled to have regard to the intention of the parties and to that extent to take into account the evidence given.

We cannot but express disappointment at the evidence of Mr. Sullivan a very experienced conveyancer who had supervised the preparation of the Contract of 8th May, 1985. As to which of the two entrances to the property was the principal entrance Mr. Sullivan in the course of his evidence totally contradicted himself explaining as the sole justification that he had made an error. We propose therefore to ignore his evidence with regard to the "entrée principale". Nevertheless Mr. Sullivan was emphatic throughout that at no time were brass plates or other signs to be placed on the curved facade or wall to the west of the more westerly of the two entrances. He defined a pilier as a column, a pillar, something separate from the rest of the walls or "cotières". He was consistent in his evidence that the signs or plates were to be placed on the narrow space between the door and the window immediately to the west of the more easterly of the two entrances.

Mr. John Dickson Habin, whose company developed the site, was quite clear in his evidence that two or three signs of good standard were to be placed in an orderly manner alongside the main door to the premises and that the signs placed on the curved facade or cotière or wall were upsetting that wall which was never to have signs placed upon it but was to be an architectural feature. He was equally clear that the main entrance to the premises is the more easterly of the two doorways.

Mr. John Wright, the estate agent who acted for the developers of the property, was equally clear that the curved wall or facade was not considered at all for the purpose of name-plates or signs. He had no doubt at all as to which of the two doors represented the "entrée principale". It was the door which gives access into the whole building and the area upon which signs were to be placed was that immediately to the west of the main door.

Furthermore, the letter boxes for the premises and the numbers of each unit were on the main door as he understood the main door to be.

To the extent that the evidence of Mr. David Nigel Cole the beneficial owner of the Defendant company was in conflict with the evidence given on behalf of the Plaintiff we prefer the evidence given on behalf of the Plaintiff. It was clear that Mr. Cole interpreted the situation as he did for the purpose of his company's business and not on the basis of an interpretation of the original covenant. Indeed he saw two principal entrances to the property, the one which he used to the ground floor and a separate one to the upstairs part of the premises and made the point that if he sub-let part of the premises he could not avoid signs in two places.

The evidence which we heard merely reinforced the conclusions to which we had already come as a result of our visit to the premises.

The clause in question relates to the "entrée principale dudit bureau formant partie de ladite propriété présentement vendue". The property is described in the principal description as "certain bâtiment ou bureau portant le numéro dix-sept". Clearly therefore, the word "bureau" refers both to the ground floor and the first floor offices. The "bureau" referred to in the clause under discussion is correctly described as forming part of the property because the property includes the southern half of the passageway to the north and vis à vis the building. It is true that, as Mr. Pallot pointed out in his address to us, several of the clauses in the Contract use different terms relating to the same property or part thereof. Nevertheless, applying the rule that words must be construed in the context of the whole of the document in which they appear, we have no doubt whatsoever that the word "bureau" in the clause under discussion refers to the offices on both the ground and upper floors.

Applying the law as explained to us by both counsel and as we have set it out above we are satisfied as follows:-

"L'entrée principale" means the main entrance to the demised building. The "bureau" on the first floor is as much part of the building as that on the ground floor. The Court is satisfied that the main entrance is that which is numbered as the front door, contains the letter box, gives access to the hallway and thus to both floors of the building. At the time that the Contract was made, which is the relevant time, that door was intended to be the main door.

"Pilier en briques" is a term which should never have been used, but perhaps the narrow space between door and window was in the conveyancer's mind a column or "pilier". The Court has no doubt that what the parties intended was that the "pilier" would apply to the narrow strip of wall immediately to the west of the principal entrance. It does not apply to the curved wall or facade which is to the west of the second entrance serving the ground floor only of the property. The Court is wholly satisfied that the parties never intended that brass plates could be affixed to two parts of the facade of the building. The word "seulement" in the relevant clause emphasises that restriction.

We would have been mindful to make an order in the terms of paragraph (1) of the prayer of the Order of Justice requiring the Defendant to remove or cause to be removed the name-plates affixed to the curved wall or facade. However, we have as requested by the parties restricted ourselves to an interpretation of the relevant terms.

Similarly the question of costs is left over.