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IN THE ROYAL COURT OF THE ISLAND OF JERSEY

(Samedi Division)

BEFORE: P.L. CRILL, ESQ., C.B.E., BAILIFF
JURAT B. MYLES
JURAT M.W. BONN

BETWEEN: TAKILLA LIMITED — PLAINTIFF
AND: ERNEST FARLEY & SON LIMITED — DEFENDANT

ADVOCATE G. LE V. FIOTT FOR THE PLAINTIFF
ADVOCATE P. DE C. MOURANT FOR THE DEFENDANT

The Plaintiff Company (the Plaintiff) is the owner of the property "Eulah" which is situate to the South of La Rue Vaucluse. The Defendant Company (the Defendant) is the owner of a site (the site) to the East of "Eulah" and which it has recently developed. At one time the Defendant was the owner of both "Eulah" and the site. It sold "Eulah" to the Plaintiff on 8th June, 1979, before the site had been built on.

Before it purchased "Eulah", the Plaintiff, through its beneficial owner, Mr. F.J. Callaghan, concluded an agreement with the Defendant, which governed the development of the site and imposed certain conditions on the development of it. The relevant conditions are contained in the Contract of Sale between the Plaintiff and the Defendant of 8th June,1979 and are as follows:-

3(1) Qu'il ne sera jàmais établi dans les cotière ou pignon Ouest d'aucune maison ou autre édifice que ladite Société Bailleresse et Venderesse pourra par la suite faire ériger sur ladite propriété qu'elle se reserve aucune fenêtre donnant vers l'Ouest à une distance moins de cinquante pieds royaux à l'Est de la limite Est de ladite propriete presentement baillée et vendue.

6(2) Que d'autant que ladite Société Bailleresse et Venderesse se propose et aura l'intention de batir, établir et construire sur ladite propriété qu'elle se réserve à l'Est de ladite propriété présentement baillee et vendue un groupe (ou groupes) de maisons de rapport (anglicisé "block(s) of flats") et appartenances tels batiment, établissement et construction seront achevés et completes conformement à et généralement en accord avec certain plan ou dessin preparé par "Messrs. Taylor, Leapingwell and Horne" et portant le numèro 326/12. Ledit plan et dessin est celui qui a été déjà soumis pour l'approbation du Comité des Etats de cette Ile dit "Island Development Committee". Etant stipulé entre lesdites parties que nuls changements ou modifications audit plan ou dessin est permis sans le consentement de ladite Société Preneuse et Acquereuse, lequel consentement ne sera pas refusé sans raison valable.

The Plaintiff was concerned about height, proximity and privacy, and therefore the two clauses, which we have renumbered, (1) and (2), were inserted to protect those interests.

Before the Defendant began to develop the site it instructed Messrs. Taylor Leapingwell, a firm of local Architects, to prepare plans. Preliminary sketches of one of "Eulah's" garages were drawn up in March 1977. In 1978 Mr. J.S. Horne, a qualified Architect, joined that firm. When subsequently he was asked to prepare plans for the Defendant, he had available to him these sketches, which a member of the staff of Messrs. Taylor Leapingwell had prepared in March, 1977.

In or about March, 1979, on the instructions of the Defendant, Mr. Horne prepared plan 326/12 for submission to the Island Development Committee. Certain modifications were carried out to plan 326/12, with which we are not concerned at this hearing, but they were affected in order to obtain development permission, as opposed to general outline permission from the Island Development Committee and are set out in plans 326/49A and 326/50. It should be noted in passing that the Island Planning Law does not envisage two sorts of permission, but for convenience it has been the usual practice when applying to the Island Development Committee in cases of substantial development, to obtain what has been called loosely, planning permission.

Eventually, there was constructed on the site two blocks of properties both three-storeys high. The properties have been labelled block 'A', which is the property nearer to "Eulah" and block 'B', which is the property further away from "Eulah". We are concerned only with block 'A', although in fact block 'B' may have infringed the agreement as well, but the parties accepted that the Court should only concern itself with block 'A'. The two blocks both abut onto La Rue Vaucluse. The Plaintiff now claims in his Order of Justice, that not only has the Defendant built higher than the heights depicted on plan 326/12, but has infringed the condition about fenêtres.

So far as concerns the condition about fenêtres, the Court has to determine whether opaque blocks, or bricks, forming an integral part of the West wall of block 'A' infringe the condition as being fenêtres, because it is admitted by the Defendant that these blocks, or bricks, have been inserted within the prescribed limits and do overlook "Eulah", and if they are fenetres then they will infringe the first condition.

It would be convenient to set out here the subsequent history of events before the present action, but after the development was started. The first action was by the Plaintiff in September 1979 prohibiting the Defendant from any further building. That injunction was lifted within two days. In February 1982, the Defendant actioned the Plaintiff claiming, inter alia, that:

(a) plan 326/12 was too vague to be enforceable;

(b) the Plaintiff had no 'raison valable' for refusing to sanction certain modifications to plan 326/12;

(c) the glass blocks were not fenêtres.

After an exchange of pleas, the Deputy Bailiff, sitting alone on 1st March, 1984 ordered the pleadings to be struck out. On 9th April, 1984, the Plaintiff discontinued that action. The Plaintiff (in this case), i.e. the Defendant in that

action was awarded costs; an appeal against that Order was withdrawn. On 20th December, 1984 the Plaintiff brought an Order of Justice imposing certain financial injunctions on the Defendants. The present action was commenced also on 20th December, 1984. The first Order of Justice of 20th December, 1984 was withdrawn on 10th January, 1985.

From the evidence we heard, it cannot be disputed that the Island Development Committee is satisfied that, in fact, the Defendant has developed the site in accordance with plan 326/12, as amended, as we have said in a limited sense, by plans 326/49A and 326/50.

It being accepted, therefore, that the Defendant did not go out-side the limits of plan 326/12 for the purposes of the Island Development Committee, all that remains is for the Court to decide whether the plan referred to in the second covenant was such that the Plaintiff was misled into believing that the height of the proposed development would be some 6 ft. less than that which he claims was in fact built. Since plan 326/12 was tendered and prepared by the Defendant following earlier plans submitted for the development of "Eulah" itself by the Plaintiff, with which we are not concerned, it is bound by its own plan, and if there are mistakes in that plan which caused the Plaintiff to act to its detriment, then the responsibility should lie at the door of the Defendant, unless in so doing the Plaintiff through Mr. Callaghan acted unreasonably or drew unwarrantable conclusions from the plan. This is, as we conceive it, the so-called "contra proferentes" rule, see de Botte -v- The National Insurance and Guarantee Corporation Limited (1974-1976) vol.2 J.J. p.157.

The question therefore which the Court has applied its mind to, is whether plan 326/12, which was shown to Mr. Callaghan by Mr. Gillham, on behalf of the Defendant, was such that he might reasonably conclude that the building would be lower than it turned out to be. Since the only evidence as to what was said to Mr. Callaghan by any of the Defendant's employees is that given by Mr. Callaghan himself, and it has not been contradicted, we accept it, so far as it is relevant. It is unfortunate that Mr. Gillham was not called by the Defendant because he was the person most concerned with the plan on behalf of the Defendant.

What therefore is the evidence concerning plan 326/12? Firstly, we are satisfied from the evidence of Mr. Horne, that the plan was prepared not for the purposes of the covenants, because as he said, had he been asked to do so it would have been less detailed and more precise. It was prepared, as we have said, solely for the purposes of obtaining planning consent and, eventually, development permission from the Island Development Committee. The parties chose to use that plan for the purposes of the covenant, but we repeat, it was put forward for that purpose by the Defendant to the Plaintiff. In saying this, we do not wish to criticise Mr. Horne, because he was preparing a plan for a different purpose from that which the covenants required. It thus had a dual purpose. It is not for us at this stage to attribute where the original mistake lay in allowing this plan prepared for one purpose to be used for another.

The Island Development Committee accepted 326/12 as a sketch proposal and in its letter of 18th July, 1980 to Messrs. Morgan Nabarro, a firm of English solicitors in Jersey it said:

> "The drawing to which you refer, 326/12 was a sketch proposal upon which the Island Development Committee agreed the principle of re-developing this land with a number of flat units. That was approved in August 1979.
>
> In November of that year a development application was made which covers both detailed planning permission and building regulations approval. That submission was basically in accordance with the original outline scheme, but was modified slightly in shape and position in order to take account of differing levels, constructional problems, drainage, etc., and the final approved layout was as shown on drawing no. 326/22C. It is to that plan which your client should refer to ascertain the exact relationship with his property. That drawing was also prepared by Messrs. Taylor, Leapingwell and Horne.
>
> As a directly interested party, your client may inspect the submitted drawings in this office, and although this is normally undertaken before the issuing of the final approval, it is apparent that your client has not seen this drawing and if he would like to avail himself of this facility, could he

enquire at the reception office at this address".

Senator Horsfall then President of the Committee in his deposition supported his officers on this point. Mr. Grainger felt that there was not sufficient variation between what was submitted for planning development and on development permission to warrant the Committee to rescind its decision to grant development permission. He said as much, in his letter to Andrew Green and Co. on 1st July, 1982.

Secondly, looking at the plan, which has a number of specific details such as site levels, there are, nevertheless, parts of the plan which are not as precise as would have been needed to obtain development permission, and it is fair to say that on this point the evidence diverges. The point of drawing 326/12 is not whether a building could be built from it, but whether what is built conforms in general to the drawing and so to condition 2 of the contractual conditions.

Several matters must now be mentioned:

1. The law is clear that when the parties have reduced their agreement into writing, then their intention is to be sought within the four corners of the document itself, see Sayers -v- Duchemin - an unreported case of 12th February, 1985.

2. Plan 326/12 is a document to which the same principles of interpretation apply.

3. If there is a latent ambiguity in the instrument, in this case plan 326/12, then evidence may be given of the parties' intention for the purposes of resolving that ambiguity. See Halsbury 4th edition, vol. 12, paragraph 1501.

4. If there is doubt as to the meaning of the wording in the covenant as to "fenêtre", the same principles as in paragraphs 1. and 3. above will apply.

In brief, the defence is as follows:-

1. drawing 326/12 is reasonably accurate;
2. the Defendant followed it and built in general accord with that drawing;
3. the Plaintiff misread the drawing;
4. it was unreasonable for him to do so;
5. there was, therefore, unilateral mistake, and the Plaintiff is not entitled to relief.

In so far as point 3 is concerned, Counsel submitted that Mr. Callaghan did not read the drawing as a whole and he must have known that some parts of the sketch on the South elevation and the North elevation were incorrect. After all he was an electrical engineer with some knowledge of plans. In fact, he had prepared some for his own development and therefore was well able to read and understand drawing 326/12. If he had compared the drawing and particularly the elevations with the road levels as depicted on the South section of the drawing, he would not have made a mistake, but of course, we are not concerned with Mr. Callaghan's mistake, if he was not mistaken; but we repeat, the main question is whether the eventual development was carried out in conformity as a whole with that proposed in drawing 326/12, and as believed and interpreted by Mr. Callaghan. So far as concerns points 3, 4 and 5, the Defendant has not pleaded mistake, nor asked the Court for leave to amend its pleadings. The defence, therefore, of mistake on the part of the Plaintiff is not now available to the Defendant.

We now turn to the plan and we accept Mr. Mourant's submission that in deciding whether the building conforms to it, we should look at the whole of the plan and not at one isolated part of it. We have accordingly done so. A good deal of the early part of the hearing which, for unavoidable reasons, was unfortunately split into two parts, which has not assisted either the Court or the parties, was devoted to discussions by Mr. Treliving, a chartered builder and Senior Lecturer at Highlands College and an Architect, Mr. Derek Mason, both of whom were called on behalf of the Plaintiff, about the levels on the plan as opposed to datum levels. Fortunately both parties and all the expert witnesses accepted the levels on the plan as relative and, therefore, to such an extent as they may have differed from the datum levels on the ordnance survey map,

that difference was no longer important.

If one looks at plan 326/12, that is to say, the one which was shown to Mr. Callaghan before the Contract was passed and agreed by him, and is the one mentioned in the Contract, one notices that it is coloured, insofar as trees and sky are concerned, and their respective colours must have some meaning. In the middle of the plan is what may be called a layout of what was proposed to be built. It will be seen that to the West of the development, were two garages separated by a greenhouse, the most Northerly of which abuts on to La Rue Vaucluse; this we will call the North garage, and the other one below the greenhouse we will call the South garage. These three buildings form the Eastern boundary, or at any rate, part of the Eastern boundary of "Eulah". No allegations are made by the Plaintiff about this part of the plan.

Above the layout is drawn the South elevation of the proposed development. That is to say, what one would expect to see standing along the South part of what is marked as communal garden and pool, at the bottom of the layout on the plan, and looking upwards, because at this stage it should be mentioned La Rue Vaucluse falls quite steeply from the Eastern boundary of the site to the Western boundary and also, the site itself falls steeply from North to South. To the West of the South elevation the Architect has drawn a tree and some lines indicating a greenhouse and a garage, there is a dispute as to which garage is indicated and we shall return to that in a moment. To the East of the South elevation is depicted ~~at~~ the top of a building called "Villa Piemonte", which was included at the request of the Island Development Committee to indicate the size and scale of the proposed development.

To the North East of the layout on the plan is depicted a cross section x-x, which is a line drawn on the layout approximately midway between block 'A' and block 'B'. It depicts from the East what the Plaintiff could expect to see along that cross section looking towards its property. Below the cross section on the plan is the North elevation of the proposed development, that is to say, what the Plaintiff would expect to see erected if looked at from La Rue Vaucluse, and at the extreme right of that elevation is depicted the gable and part of the North East eaves of the North garage of the Plaintiff. Below the North elevation is the site location plan which does not concern us.

We turn therefore to the South elevation. According to Mr. Horne, as we have said, this was no more than a sketch and it is difficult to accept that it could be an accurate scaled depiction of what would be seen from the South. Nevertheless Mr. Horne used it and scaled it off in the course of his evidence and he said it was pretty accurate. Mr. Callaghan relied on the South elevation principally to project a building line which he thought would be the highest part of the development and beyond which he would not be prepared to allow the development to obtrude. At each end of the building of block 'A', on the roof are shown a little squiggle or what has been called a "nib", which, according to Mr. Horne, indicates that the roof was going to be higher than actually shown on the plan. The reason for depicting the higher roof in that way, is that because if one looks at the elevation from the bottom of the slope of the site, one would not see the actual ridge level of the roof. We think that for the purposes of the covenant that could be very misleading. The nibs are almost indistinguishable from the blue sky which comes right down to the parallel part of the roof. Furthermore, in that part of the plan there are no measurements.

When we examine the two garages, and we noted on the site when we visited the area, that both had tiled roofs, there is a conflict of evidence. There is on the plan superimposed on the outline of the tree, to the left of the South elevation sketch, a line which is indicated with an arrow, as being the garage roof. To its left is a further arrow which is described as pointing to the line of the greenhouse roof. There is, as we have said, dispute whether the reference to the garage means the North garage or the South garage and exactly where the apex of the garage roof is. Above the end of the arrow depicting what is described as the garage roof, and we are bound to say that it is extremely difficult to see, as the arrow itself and the point where it finishes is by no means clear, then continuing in a North Westerly direction, is a straight line terminating in a small knob. It was from that knob that Mr. Callaghann drew his projected building line up to the highest point on "Villa Piedmonte".

It was agreed that the actual difference in height between the ridges of the North and the South garage was 300mm. The 1977 drawings of one garage, we think, may well have been that of the South garage as it has shown ridges, whereas the South garage is flatter. However a later plan 463B shows the

South garage. As we have said, height was one of the most important matters to the Plaintiff, but Mr. Horne said that he was not aware of this. If the drawing to the West of the South elevation was a sketch then how was it possible for Mr. Horne to be sure which garage he depicted? Indeed he says so in his letter to Mr. Gillham of 11th February, 1981, where he said that the ridge was briefly shown. If it was insufficiently depicted how much the more therefore could Mr. Callaghan be mislead. As regards the North elevation the Defendant admitted that the ridge of the garage is shown lower than on the cross section x-x, but Mr. Horne told us that as against that, he had built block 'A' from the worst point of view of the Defendant.

The evidence of Mr. Callaghan is supported by that of Mr. Treliving, Mr. Mason and Mr. Tucker, the Assistant Development Officer/Building of the Island Development Committee. We think that the garage depicted and the roof shown could reasonably have been taken by the Plaintiff to be the South garage, for the reason that on the South elevation one would expect the South garage to be shown clearly. Where the arrow to which we have referred depicting the garage roof is shown, the apex appears definitely higher than the greenhouse and it may, therefore, reasonably be expected that that was the apex of the Southern garage.

Mr. Mason and Mr. Treviling showed cut-outs of the development, first as planned and then as carried out, showing the difference between 326/12 and the actual development. The cut-outs supported their evidence that the height of block 'A' is some 6 ft. beyond that shown on drawing 326/12. Mr. Horne did not accept the cut-outs as accurate.

Furthermore, we think that the line of the greenhouse roof, as so described, is exactly what it says. Even if there was a mistake by Mr. Callaghan as to the position of the eaves, one could reasonably assume that the apex of the garage roof was the South garage roof, as shown, and that it was in the correct relation to block 'A'. We note that Mr. Tucker and Senator Horsfall, who was then President of the I.D.C. felt that the ridge depicting the roof on the South elevation, finished where it was shown and where the blue sky ended. In his evidence Mr. Callaghan said that when he had established the point of the apex of the garage which as we have found was reasonable for him to suppose was the South garage, in discussions with Mr. Gillham, they agreed

them, and he then put a ruler across the building and he said to Mr. Gillham, "well there is no problem". The penthouse of block 'A' which was depicted as about 30 ft. to 40 ft. away and lower than the sight line drawn from the apex of the garage roof (which he was satisfied had been established as the South garage) and the apex of the roof of "Villa Piemonte". At no time did Mr. Gillham correct him. It is apparent, of course, that the roof line of the penthouse is considerably higher now than the Southern garage apex. Furthermore, Mr. Callaghan made it quite clear that he covenanted with the Defendant on the basis of the plan being correct. As far as the levels are concerned Mr. Mason supported Mr. Callaghan and said that if the drawing had been correct and block 'A' had been built in accordance with the drawing, then the garage height should be level with the top of the penthouse, and clearly it was not.

Reverting to the cross section x-x, it did not show "Eulah's" buildings because of the slope of the land and so in effect the East elevation of block 'A'. Nevertheless, it gives the impression from that elevation of a single storey building above Rue Vaucluse, because as we have already said Rue Vaucluse descends steeply towards "Eulah" at the West end of the site. Clearly the three storey block appears to be much higher
if looked at from the West elevation. In other words, we do not think that section x-x was particularly helpful.

In any case it is admitted by Mr. Horne that the angle of the apex on the penthouse is incorrect. It is interesting also to note that even following this plan, as described by Mr. Horne, there had to be a reduction in the overall height, as it had been shown too high for the purposes of the I.D.C. and as we have said, Mr. Horne took a mean of what he called the "worst possible quotient" from the point of view of the client, and reduced it accordingly. If the plan therefore was not sufficiently accurate for Mr. Horne, for his client's purposes, how can it be said to be accurate and be sufficiently clear to assist the Plaintiff in deciding whether to accept it from the point of view of the first covenant?

Lastly, we look at the North elevation. Firstly, it is accepted that the roof ridges were not correctly shown. Secondly, there were no nibs, even if these were important from this angle. Thirdly, the sky was depicted as coming right down to the roof. Likewise, fourthly, the trees indicated the height of the roof, but lastly, and much more important, the height of the Northern garage and its supporting wall gives a very false impression, as it is several feet higher than it should be according to the scale. One has to remember that Mr. Callaghan was not looking at a finished building or a structure in the course of being built, but at an empty site access to which was obstructed by bushes and trees, and he could not be blamed if he found it difficult to visualise or make an accurate relative assessment.

Both Mr. Mason and Mr. Treliving, said that the building of block 'A' is some 2 metres higher than that shown on plan 326/12. If both these witnesses, experienced men in their own professional ability, give this evidence, then even comparing it with the evidence of Mr. Horne, we have come to the conclusion that it was reasonable for Mr. Callaghan to read the plan even taking it as a whole, and particularly, from the North elevation, as indicating a building that would be in fact some 6 ft. or 2 metres lower than that which materialised.

We find that, as regards the height of the building, block 'A' was not built subsequently in accordance with plan 326/12 as interpreted by Mr. Callaghan for the Plaintiff.

We now turn to the meaning of "Fenêtre".

Advocate Fiott invited us to add to the express words of the clause an implied term that would have allowed us to consider Mr. Callaghan's evidence that he had been promised or was expecting a blank wall. What he covenanted for was that the Defendant would not insert fenêtres, nothing more, nothing less. The covenant was not for ouvertures, lumières or vues. Where there are express terms the Courts in England are loath to imply further terms. (See Halsbury 4th Edition Volume 9 at paragraph 356). Moreover, just as the Defendant did not plead mistake, neither did the Plaintiff plea an implied term. Accordingly, we are unable to accept Mr. Fiott's

submission on this point, although we are satisfied that the reasons for the acceptance of the clause by the Plaintiff was that (1) it did not wish Eulah to be overlooked; (2) it did not wish openings in the wall to give the appearance of windows, and (3) it did not wish to look at lights at night in the wall. We note further that in addition to the glass bricks there is one door in the wall which undoubtedly offends against the clause.

We start by saying that a fenêtre or window, and there is no reason why we cannot use the English translation as the legal meaning appears to be the same in either language, can be on the vertical or horizontal plane, as a case on ancient lights, which do not apply to Jersey, makes plain. (Easton -v- Isted, 1 Ch D. at page 405). There are a number of useful references in Le Gros' Traité du Droit Coûtumier. The first one is in his Chapter dealing with Servitudes. There on page 20 he says the following:

"Pour ce qui est des vues sur la propriété du voisin, le Code Civil, article 675, prescrit que l'un des copropriétaires ne peut, sans le consentement de l'autre, pratiquer dans le mur mitoyen aucune fenetre ou ouverture, même à verre dormant. Le droit de vue ne rentre pas dans la destination du mur mitoyen."

It is clear that he is talking of a droit de vue and not defining a window as such. Moreover, he goes on to point out that a party wall is built exclusively to enclose a property. At page 262 in his Chapter dealing with Du Relief Des Maisons Et Des Terres, is the following paragraph:

"Remarquons que le propriétaire d'un mur ou bâtiment peut y pratiquer fenêtres pourvu que ce soit à verre dormant (verre mort et non ouvrant). Pothier, titre 13, Des Servitudes réelles, cite l'article 230 de la Coutume d'Orleans dont nous reproduisons les termes: Voirre dormant est voirre attaché et scellé en plastre ou chaux, que l'on ne peut ouvrir, ne au travers d'iceluy avoir regard pénétratif sur l'héritage d'autrui."

On page 509 under the title Verre Dormant is the following passage:

"Verre mort et non ouvrant. D'après Pothier, c'est un verre assez épais pour empêcher les regards de percer dans la maison du voisin, et assez transparent pour laisser passer autant de jour qu'il en faut. Basnage, art. 615: c'est un verre épais à travers duquel les yeux ne puissent pénétrer. v. Le Geyt. Tome 2, p. 19."

We read these passages to mean that windows can be inserted overlooking a relief provided that they consist of verre dormant. If we look at the definitions in various dictionaries of fenetre or window we find the following:

In the 1974 Edition of "Larousse" - Illustre the definition reads thus:

"FENETRE - Baie pratiquée dans un mur pour donner du jour et de l'air à l'interieur d'un édifice. Boiserie et chassis vitre que garnissentcette overture. Fausse fenêtre, fenètre qui ne possede que les tableaux, mais dont l'ebrasement est bouché."

In that definition a window allows air or light enter the interior.

Webster has three requirements for a window: it should be capable of being opened or shut and it should admit light and air.

The Shorter Oxford English Dictionary describes a window as:

"I. An opening in a wall or side of a building, ship or carriage, to admit light or air, or both and to afford a view of what is outside or inside; now usu. fitted with sheets of glass, horn, mica, etc., a frame containing a pane or panes of glass, or glazed sashes."

Mr. Mourant cited Holiday Fellowship -v- Hereford 1959 1 AER page 433. That case enforces the view which we accept that we should apply ordinary standards of common sense and interpretation of language. In this case it is a matter of degree. We concluded that to fall into the definition of a fenêtre or window the glass bricks in the building would have to (1) admit air or (2) light and (3) allow a person to see in or out of the building. The glass bricks satisfy the first two requirements but fails on the third. The references in Le Gros do not, we think, apply to the present case. The glass bricks are not, therefore, fenetres.

As to the Plaintiff's remedy the Court is bound by the principles enunciated in the case of Felard Investments Limited -v- The Trustees of the Church of Our Lady Queen of the Universe, 1979 JJ page 19.

We have no power to award damages in substitution for the removal of the offending parts of Block A. Had we been able to do so we would have thought that in the present case substantial damages would have been a proper remedy.

Our Judgment therefore is as follows:-

(1) We order the Defendant to remove that part of Block A which is greater than the height shown on Plan 326/12 that is to say above a sight line drawn from the ridge of the Plaintiff's South garage to the ridge of Villa Piemonte.

(2) To remove and block up with masonry or glass bricks the door in Block A which overlooks Eluah.