



7 November 2012

## PRESS SUMMARY

**Morris (Appellant) v Rae (Respondent) (Scotland) [2012] UKSC 50**  
*On appeal from: [2011] CSIH 30*

**JUSTICES:** Lord Hope, Lord Walker, Lord Sumption, Lord Reed, and Lord Carnwath.

### BACKGROUND TO THE APPEAL

In 2004, the Respondent, Mrs Rae, sold land to Ransom Developments Ltd (“RDL”). Her disposition contained the words “and I grant warrandice”. In Scots law, warrandice is a contractual warranty of title given impliedly if not expressly by a seller to a purchaser. The seller will only be obliged to indemnify the purchaser in respect of losses suffered as a result of a defect in title if the purchaser is “evicted” from the property, although actual removal is not required. In this case, the warrandice was absolute, meaning that a warranty was given against all defects in title at the time the disposition was delivered.

When RDL attempted to complete its title to the land by registering it in the Land Register of Scotland, the Keeper of the Registers informed RDL’s solicitors that the Respondent had never had title to part of the land which she had sold to RDL. That part (the “disputed part”) was truly owned by James Craig Ltd (“JCL”). The title to the disputed part was in fact held by a Mr Lynch, the disputed part having been transferred by JCL to him in error in 1991. In 2005, JCL threatened to evict RDL from the land. RDL paid £70,000 to JCL to avoid eviction. JCL procured the grant of a disposition of the disputed part by Mr Lynch to RDL in 2006. RDL’s title to the land (including the disputed part) was then registered. In 2007 RDL went into liquidation and assigned its rights to the Appellant, Mr Morris.

These were the basic facts which the Appellant offered to prove in his action against the Respondent for breach of warrandice. There has not yet been an evidential hearing. At a preliminary stage, the Respondent attacked the relevancy of the Appellant’s case, arguing that even if the Appellant proved everything that he offered to prove, he could not succeed in his claim. Following a debate, the Temporary Judge (Rita Rae QC) rejected this argument and allowed the case to proceed. The Respondent successfully reclaimed (appealed) to an Extra Division of the Inner House of the Court of Session, who by a majority dismissed the action as irrelevant. **[4–8 and 33–36]**

In the course of his appeal to the Supreme Court, the Appellant offered to prove that when JCL made the eviction threat, RDL and JCL both believed that JCL held title to the disputed part, neither being aware that the title had in error passed to Mr Lynch; that if the error had been discovered, JCL would have been immediately able to secure title to the disputed part from Mr Lynch; and that no proceedings or proof of title would have been required to establish JCL’s title to the disputed part. All the facts which the Appellant offers to prove are assumed for the purposes of the appeal which is concerned with whether or not the Appellant is entitled to prove his case. **[9–10 and 37–38]**

The issues in the appeal are whether the person who makes the threat of eviction has to have an unquestionable title to the property at the time when the threat is made and, if not, what the purchaser in those circumstances has to show in order to trigger the seller’s liability under the warrandice. **[12, 24 and 39]**

## JUDGMENT

The Supreme Court unanimously allows the appeal. The Appellant is entitled to the opportunity to prove his case. The leading judgments are given by Lords Hope and Reed, who agree with each other, and with both of whom Lords Walker, Sumption, and Carnwath agree.

## REASONS FOR THE JUDGMENT

It is not always essential that the threat of eviction should be made by the person who has a title to the property at the time when the threat is made. This is consistent with principle and the practical purpose and rationale of the law of warrandice, which, in order to avoid pointless delay, expense and litigation, permits a purchaser who accedes to a threat, without any judicial determination, to claim against the seller for breach of warrandice. It would be wrong if the law were to maintain that the purchaser can rely on the seller's warrandice only if he accedes to a threat made by the title holder – who may have no interest in evicting the purchaser – and not a third party who, although not yet having obtained title, has an interest in evicting the purchaser. [25–26, 49–52 and 56]

There must of course be a competing title which will prevail in a question with the purchaser. If the purchaser buys off the threat, he must be able to show that he transacted with the right person (being the person who has a title and interest to make good the threat) and that the threat was capable of being made effective. It will be good enough for the person making the threat to have an incomplete title if he is undoubtedly in a position to compel the title holder to transfer the title to him or, if the threat is bought off, to the purchaser. [26–27]

In other words, the purchaser must, objectively, have no realistic alternative but to accede to the threat of eviction. Whether such an alternative exists in particular circumstances must be a matter of judgment on the facts. It is likely that no such alternative will exist in a situation where the person making the threat has an unqualified entitlement, exercisable immediately, to demand a transfer of the title currently vested in another person, and upon such a transfer will undoubtedly be entitled to evict the purchaser. [56]

In the present case, the Appellant is offering to prove that JCL would have been immediately able to secure title to the disputed part without the need for proceedings by demanding a transfer of the title vested in Mr Lynch, and that RDL would have had no defence to JCL's threat of eviction. He has therefore set out a relevant case against the Respondent. [32 and 57]

*References in square brackets are to paragraphs in the judgment*

## NOTE

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

[www.supremecourt.gov.uk/decided-cases/index.html](http://www.supremecourt.gov.uk/decided-cases/index.html)