

ROYAL COURT
(Samedi Division)

158

11th August, 1997.

Before: F.C. Hamon, Esq., Deputy Bailiff, sitting alone.

Between:	Marina Leisure Industries Limited	Plaintiff
And:	Alain Christian Girard	First Defendant
And:	Porto Holdings Limited	Second Defendant

Advocate R.G.S. Fielding for the Plaintiff.
The Defendants did not appear and were not represented.

JUDGMENT

THE DEPUTY BAILIFF: On Friday last, the Plaintiff in this action applied for a default judgment under Rule 6/7(5) of the Royal Court Rules, 1992. Unusually, the matter was adjourned to today so that I could hear full argument.

5

On 7th July, 1995, an order was made that the Defendants should make discovery of documents within fourteen days. It was what is commonly called an "unless" order. If the document were not supplied then without further order of the Court being required the Defendants' Answers would be struck out. The Defendants had, in any event, to pay the costs of and incidental to the summons on a full indemnity basis.

10

The Order of Justice is complex but shows that a man called Alain Christian Girard used his alter ego, Porto Holdings Ltd., (these are the two defendants) to purchase a valuable plot of land adjacent to where the Plaintiff has a hotel in Port Vauban, Antibes, in the South of France. It is clear that the purchase was made in flagrant breach of Monsieur Girard's contractual and fiduciary obligations to the Plaintiff. The corrupt scheme used in part the Plaintiff's money.

15

20

The Rule in Keech- v- Sandford (1726) Sel.Cas.Ch.61 is explained succinctly in A.J. Oakley's Constructive Trusts (3rd Ed'n: 1997) at page 156:

25

"In Keech -v- Sandford a lease of a market was held on trust for an infant. The trustee sought, unsuccessfully, to renew the lease for the benefit of the trust. However, the landlord, although not prepared to renew the lease to the trust, was prepared to grant a renewal to the trustee in his personal capacity and the trustee duly took the lease in his own right. Lord King L.C. held that any trustee who abuses his position by entering into a transaction with a third-party must account for the benefit of the transaction as a constructive trustee.

30

5 *Consequently the trustee held the benefit of the lease on constructive trust for the infant. His lordship stated the rationale of the rule both simply and cynically: if a trustee on the refusal of a lessor to renew a lease to the trust were permitted to take a lease himself, few leases would ever be renewed in favour of trusts".*

10 The relationship in this case is governed by Jersey law. The Second Defendant is a company registered in Jersey and I have no doubt that on the facts as set out in the Order of Justice and as explained to me by Advocate Fielding the transactions into which the Defendants entered fell fairly and squarely within the scope of fiduciary obligations to a principal. The land which is referred to in the Order of Justice as "*the adjacent land*" is held on constructive trust.

15 It is clear from passages of Dicey & Morris on the Conflict of Laws cited to me (Rule 116) that this Court has jurisdiction (although the proceedings principally concern the question of title to, or the right to the possession of, immovable property situated outside the jurisdiction) where the action is based on a contract or equity between the parties. I am further assisted in this matter by an affidavit from Avocat Jean Jacques Saurel, a member of the Bar of Nice and a practitioner in civil and commercial law for 30 years. Monsieur Saurel deposes that "*in general under French law the facts alleged by Marina Leisure would afford it relief as claimed in the Order of Justice against Port Holdings and Girard*".

20 It was necessary to hear legal argument but I am satisfied that the order can and should be made and I rule accordingly.

Authorities

Keech -v- Sandford (1726) Sel.Cas.Ch.61.

A.J. Oakley "Constructive Trusts" (3rd Ed'n: 1997) at p.156.

Dicey and Morris: "The Conflict of Laws": Rule 116.