

Judgment 23/2007

**Jones v Le Vallée – Royal Court (Civil Action File
1103) – 27th July 2007**

Licitation – dwelling owned by the parties in undivided half shares – each had granted life enjoyment of their half to the other – parties had agreed to proceed by way of licitation – issue whether the Court had power to postpone the making of a licitation order – defendant ordered to participate in a licitation or judicial action within 5 months

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

Civil 1103

The 27th day of July 2007 before Richard John Collas, Esquire, Deputy Bailiff

Between

Paul David JONES

Plaintiff

- and -

Clara Sabra McCann LE VALLEE

Defendant

Whereas on 23rd July the Deputy Bailiff considered an application for directions as to whether to commence or delay the commencement of licitation proceedings and heard thereon Advocates J. E. Roland and A. M. Merrien counsel for the Plaintiff and Defendant respectively the Deputy Bailiff this day handed down judgment in the terms attached hereto and ORDERED;

1. that the Defendant, within a period of 5 months of this date, must participate in a judicial auction or licitation of the premises before Commissioners of the Court.
2. that third parties will be permitted to participate in the judicial auction unless they agree otherwise and if some other agreement is reached between the parties they must return to Court.

S M D ROSS
H M Deputy Greffier

**IN THE ROYAL COURT OF GUERNSEY
ORDINARY DIVISION**

Between **Paul David JONES** **Plaintiff**

- and -

Clara Sabra McCann LE VALLEE **Defendant**

Decision

Judgment handed down: 27 July 2007

Before: Richard John COLLAS Esq., Deputy-Bailiff

Advocate for Applicant: Advocate J E Roland
Advocates for Respondent: Advocate A M Merrien

Cases & statute referred to:

1. Greening & Greening -v- Zabiela, Royal Court 23 September 1992.
2. Waterman -v- McCormack, Court of Appeal 20 May 2002.
3. Selwood -v- Madeley and McCormack -v- Waterman, Royal Court 19 December 2001.
4. Chapman and Brook -v- Ozard, Linnecor and Frampton, 18 October 1979 in the Royal Court.

Judgment

1. This is a decision on whether to make an Order for the commencement of licitation proceedings or more specifically whether to delay the commencement of those proceedings. The Plaintiff who is seeking an Order for licitation, Mr Jones is represented by Advocate Roland and the Defendant Miss Le Vallee, by Advocate Merrien.
2. The proceedings relate to a property purchased on 16 November 2004 described in the conveyance as a dwelling house known as “Val Du Creux” (formerly “La Bonne Heure”) with shed, domestic glasshouse and land the whole adjoining and situated at Belval Road in the Vale on Fief Saint Michel. The property was vested in the parties accepting for themselves as follows, as to an undivided one-half share therein in the Plaintiff for himself and his heirs and as to the remaining undivided one-half share therein in the Defendant and her heirs.

3. A possible complication of these proceedings will be that the parties mutually granted each other a life enjoyment over the half belonging to the other party, such life enjoyment to be exercised jointly during their joint lives and thereafter during the life of the survivor. I will return to that later.
4. Miss Le Vallee lives at the property [.....]
5. The first question that arises in proceedings over the division of property, following the decision of the then Deputy Bailiff in the case of *Greening & Greening -v- Zabiela* Royal Court 23 September 1992, is whether the property could be divided by way of partage. There was a suggestion in these proceedings that it might have been possible to have a partage of these premises because at one time there had been a planning permission in principle for the construction of a new dwelling on part of the garden, but that permission in principle has now lapsed and neither party wishes to pursue the possibility of partage. Both agree that the matter should proceed by way of licitation.
6. The Order that is sought is set out in paragraph 5(1) of the Plaintiff's Cause as follows:

“To order the Defendant within such time and upon such penalties that the Court may be pleased to order to participate in a judicial auction (licitation) of the said premises before Commissioners of the Court”.
7. [.....]
8. [.....]
9. I have not heard formal evidence as to the value of the property but in correspondence (and this appears to be accepted by the parties), it is said the property is worth somewhere in the region of £525,000. The outstanding mortgage is in the region of £310,000, leaving an “equity” of about £215,000. Both parties accept that they have an equal interest in the property, subject perhaps to any argument over the life enjoyment in respect of which they are reserving their position at the moment. So it would appear that a figure in the region of £107,500 is what Miss Le Vallee would have to pay to buy out Mr Jones' interest. If she does so, she will also have to take on sole responsibility for the existing mortgage of about £310,000 so she would need total borrowings in excess of £400,000. Her current income is presently in the region of about £30,000 and Advocate Roland argues that there is no realistic prospect that the amount of maintenance to be ordered by the Magistrate's Court will be sufficient to enable Miss Le Vallee to bridge the gap between what she presently earns and what she would need to earn in order to service a mortgage of over £400,000.
10. Advocate Merrien says that I have a discretion to postpone the making of a licitation Order and I should exercise that discretion in Miss Le Vallee's

favour. Advocate Roland denies that there is any such discretion. I have not been referred to any authority which is clearly on point. My attention was drawn to the penultimate paragraph of the Deputy Bailiff's judgment in *Greening & Greening -v- Zabiela* but in my view that passage deals with the deferring of the licitation, or of the judicial auction, once those proceedings have actually commenced. I do not believe that paragraph addresses the question of whether the start of the licitation proceedings can be delayed.

11. I have also been referred to the decisions of the Court of Appeal in *Waterman -v- McCormack* 20 May 2002 and Deputy Bailiff Day's decision of 19 September 2001 in *Selwood -v- Madeley and McCormack -v- Waterman* Royal Court 19 December 2001 but neither of those judgments appear to deal with this specific issue.
12. If I was required to form a definitive view as to whether I have a discretion to postpone the licitation, I would wish to research other authorities further. My initial view is that I do have a discretion to postpone, although it may be a rather limited discretion perhaps to postpone for only a relatively short period of time. That is only my initial view and I do not need to resolve the question because I am not persuaded on the evidence before me that I should postpone the start of the licitation even if I have a discretion to do so.
13. Advocate Merrien argued that Advocate Roland had not produced evidence to show that Miss Le Vallee would not have sufficient funds to enable her to purchase Mr Jones' interest at the conclusion of the maintenance hearing. In my judgment the onus is on the Defendant who is seeking to postpone the start of the licitation to satisfy me that there is at least a reasonable prospect that if postponement is granted, Miss Le Vallee will be able to raise the funds required. Advocate Merrien has not so persuaded me. So even if I have a discretion, which I believe I probably do have, I would not be minded to exercise it in Miss Le Vallee's favour.
14. I therefore make an order that the parties are to participate in the licitation proceedings. The next question is to decide within what time period they should do so. In the case of *Chapman and Brook -v- Ozard, Linnecor and Frampton* 18 October 1979 in the Royal Court, the then Bailiff Sir John Loveridge made an Order that the Defendants participate within 3 months of the date of his judgment in the judicial auction of the premises involved in that case.
15. Advocate Roland argued that 3 months is the norm. Fortunately, licitation proceedings are still relatively rare and I do not believe that the few isolated cases that we have can be enough to say there is sufficient authority to conclude what the norm would be. In each of the proceedings that come before the Court, it must be appropriate to look at all the circumstances of each case and decide what period would be appropriate in such circumstances.

16. In this case there are still a number of things to be done. I am told that if Miss Le Vallee is not in a position to buy out Mr Jones' interest, it is possible she may yet agree to a private sale and I accept that it is preferable, if there is to be a sale to third parties, that the possibility of a private sale should be explored before going down the route of a judicial auction.
17. There are a number of other issues to be resolved. I have referred to the mutual exchange of life enjoyments under the terms of which the enjoyment that each of them has over the undivided one-half share of the other has already vested. There may be an argument as to whether such a life enjoyment would survive a licitation or whether, because of the mutuality that exists here, the life enjoyments could be simply ignored and the property treated as if it were equally owned by the two parties. Neither Counsel is yet in a position to argue the legal issues involved and may require a further hearing at a future date. If so, some time will be needed to prepare an exchange of arguments and to conclude the hearing and deliver a judgement. If that issue cannot be resolved amicably, it may well take some time to resolve on a contested basis.
18. Another issue is that if Miss Le Vallee is unable to buy out Mr Jones' interest to enable her to remain in the property, she will have to re-house herself [.....] and she may take some time to make the necessary arrangements.
19. The decision of the Magistrate's Court on the maintenance proceedings is also awaited. Also, the terms and conditions of any sale of the property will have to be agreed between the parties.
20. In all those circumstances, I believe that 3 months would not be sufficient. I am required to decide on a period of time and the time that I choose is 5 months which takes us to the end of the year. There shall be liberty for either party to apply for the sale to be deferred if it is appropriate to do so.
21. So on that basis the Order that I make (by reference to the Cause) is that the Defendant, within a period of 5 months of this date, must participate in a judicial auction or licitation to the premises before Commissioners of the Court.
22. Advocate Merrien stated that it was accepted that if an Order is made, the standard position is that third parties will be permitted to participate in the judicial auction (see *Greening and Greening -v- Zabiela*) unless they agree otherwise. I so order in this case and if some other agreement is reached between the parties they must return to Court.
23. When the Deputy Greffier produces the Act of Court he will advise the name of the Jurat who is nominated as Commissioner.