



In the matter of a Clameur de Haro, Re: C
Royal Court
15th April, 2015

JUDGMENT
17/2015

Application to declare the raising of the Clameur de Haro and for leave to register.

IN THE ROYAL COURT OF GUERNSEY

In the matter of a Clameur de Haro

Re: C

Application to declare the raising of the Clameur de Haro and for leave to register

Hearing in Chambers
Before Sir Richard John Collas, Bailiff

Application date: 15 April 2015

The applicant appeared in person

1. The purpose of this written judgment is to place on record the procedure followed and the decision made in the matter of an application by an applicant in person who appeared before me in Chambers to make a declaration of the raising of the Clameur de Haro and to apply for leave to register the Clameur. At first sight, it appeared to be a valid use of the ancient customary remedy but after further enquiry of the Clamant (to whom I will refer as “C”), I ruled that I would not grant leave without hearing further legal submissions and I left it open for her to return later in the day if she wished to do so. In the event, she did not return and the Clameur was not registered. As it was not registered, I consider it appropriate not to name the Clamant or the tortfeasor in this judgment.

Factual background

2. C is the owner of a residential property in St Peter Port. On 14 April, she returned home from work at 3.30 p.m. to find a mechanical digger driven by a man who I will call “D”, an employee of a local company that had been engaged by C’s neighbour (“N”) to create a parking space. The declaration read:

“I walked out of my house to find work was well underway and a piece of land bigger than a car had been dug out of my front garden by the time I realised as I had been at work all morning.

I called [N] who had not advised me of his intention to dig up this land. [N] advised me that although it is possible his men had “over-stepped” the mark he believed the land to be his.

On examining the title deeds to my house owned by me for 14 years and the plans two of my neighbours helped me measure the land in front of my house. We all agreed the land dug up by [N]’s men belonged to me.

Therefore on recommendation of my Advocate I recited the Clameur de Haro and advised [N].”

3. C further declared that the Clameur was declared at 6 p.m. on 14 April in the presence of three witnesses whose names, addresses and signatures were appended.

Procedure

4. C attended at the Royal Court on 15 April shortly after 9 a.m. asking to appear before a judge to declare and register the Clameur. She was not accompanied by an Advocate. At my request, the Senior Deputy Greffier handed to her a copy of the article entitled “Clameur de Haro” based on a paper presented by de V. G. Carey, Q. C., H. M. Procureur (as he then was), at the Semaine de Droit Normand held in Guernsey in May, 1990 published in the Guernsey Law Journal at 11. GLJ, page 31.

5. At page 31, after describing the procedure for raising the Clameur at the site of the alleged wrongdoing, the Article reads:

“The plaintiff is then obliged to take his Clameur to the Bailiff within 24 hours and complete an affidavit before him together with his two witnesses confirming that the Clameur has been duly raised.”

6. The GLJ article thereby suggests that the two witnesses should appear before the Bailiff along with the plaintiff. On this occasion, C did not have her witnesses with her and I questioned whether their presence was necessary. No authority was cited in the GLJ article for that proposition and I could find no other record to confirm that the witnesses were required to attend before the Bailiff. I therefore directed that her application could proceed in the absence of her witnesses, noting however that the witnesses had signed the declaration and appended their names and addresses.
7. I heard the application in a court room, in the presence of the Senior Deputy Greffier who recorded the proceedings. The recording was for convenience rather than a necessity; if the application had been made out of normal working hours when no court facilities were available, it could have been made to a Bailiff alone, in my view.
8. I placed C on oath to declare the truth of the contents of her declaration and then proceeded to ask some questions to satisfy myself as to the validity of the Clameur.

Discussion

9. During my further questioning of C, I learned that at the moment when the Clameur was raised, none of the alleged wrongdoers were present.
10. C told me that having noticed the work at 3.30 p.m., she spoke to D and then, by telephone, spoke to N. N denied that he had done anything wrong and made clear to her that he had no intention of seeking to resolve the matter amicably. She then spoke to an Advocate who advised that she could raise the Clameur de Haro. Next, she contacted three neighbours who helped her and witnessed the raising of it. By then it was 6 p.m. when neither D nor N were present so neither of them witnessed the act of raising the Clameur.
11. I questioned whether it was an essential requirement that the Clameur de Haro be raised in the presence of the wrongdoer, that is to say, the owner or occupier of the neighbouring land or his servant or agent in the process of committing the wrongful act. The issue is not addressed directly in any of the following authorities: the GLJ article quoted above; Laurent Carey, *Essai sur les Institutions Lois et Coutumes de l’Ile de Guernesey*, 1765, published by the Royal Court in 1889, page 197; Sherwill, *Notes as to Origin and History of La Clameur de Haro and on its use in Guernsey in the 20th century* (Transactions de la Société Guernesiate,

1947, page 129); and In re Kirk's Clameur de Haro (No. 2) 7.GLJ.11. However in Gordon Dawes' Laws of Guernsey, he wrote at page 486:

"A complainant raises the Clameur by dropping to his knees at the site of the alleged wrongdoing in the presence of two witnesses and ideally the person to be injuncted and saying the following..."

In a footnote he added:

"A person will not be bound by the Clameur until he has notice of it, either by witnessing the Clameur or else by service of a subsequent notification by H M Sergeant."

12. The suggestion in those last two passages is that the wrongdoer need not be present at the moment the Clameur is raised by the plaintiff; instead, he can be notified later and will only be bound by it after receiving notice via HM Sergeant, presumably after the Clameur has been registered before the Bailiff. Unfortunately, no authority was cited for that proposition and in the time available to me, it was not possible to research it further either by looking at previous instances where the Bailiff has given leave to register the Clameur or by looking at any of the other Commentators on the Coutume, such as those listed in the GLJ article.

13. In my judgment, it is an essential feature of the Clameur de Haro that the wrongful act complained of must cease immediately. Laurent Carey wrote, at page 197:

"Quand Haro est crié, la partie doit cesser son enterprise, et, s'il ne le fait, c'est un attentat pour lequel la partie doit être condamnée en amende vers le Roi, et à une nuit d'emprisonnement au Château, et doit être réparé tout ce qui a été fait depuis la clameur par le Procureur de la Roi quand il en a été informé."

14. It is my understanding that because of the requirement to cease the wrongful act immediately, the wrongdoer (or his servant or agent) must be present at the moment the Clameur is raised. Otherwise, if he does not know about it, work may continue until the plaintiff has appeared before the Bailiff, obtained permission to register the Clameur and arranged for it to be served through the offices of H M Sergeant. Such delay is, in my view, inconsistent with the fundamental purpose of the Clameur de Haro which is to restrain wrongful interference with land when the interference is imminent or actually occurring.

15. Where the wrongdoer is not present, The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 offers an alternative remedy in that it confirms that the Royal Court has power to grant interim injunctions. The ability to apply for an interim injunction will, in many cases, be more appropriate than the Clameur, especially where the plaintiff fears that his neighbour may commit a wrongful act but he may not be able to be present when the act occurs.

Decision

16. The Applicant, being a litigant in person, was unable to assist me with any legal submissions. It was unclear to me whether her Advocate, who she had contacted the previous evening, was aware that the wrongdoer had not been present when the Clameur was raised by her. I suggested that she contact the Advocate as it was not my position to conduct urgent detailed research into the ancient Commentators. I told C that, on the evidence presented to me, I was not persuaded that the Clameur de Haro had been properly raised in circumstances where it was not in the presence of the wrongdoer or his servants or agents.

17. However, I did not dismiss the application for registration there and then. It was 11 a.m. and C had twenty-four hours from raising the Clameur at 6 p. m. the previous evening in which to make her application. Alternatively, if the work was still continuing, as she feared, she could raise the Clameur afresh in the presence of the wrongdoer and her witnesses and come back before me with a fresh application. I therefore adjourned the hearing to enable her to seek

legal advice and, if so advised, to appear before me later in the day either to renew her present application or, with a fresh application or, if so advised, to apply for an interim injunction under the 1987 Law. In the event, she did not reappear. We have not heard from her again. Her application to register the Clameur has not been pursued within the 24 hour period and must therefore be formally dismissed.

18. I leave open for another day the question of whether the person who it is sought to injunct must be present in person or through his servant or agent at the moment the Clameur de Haro is raised but I place on record my understanding that the wrongdoer's presence is essential.