

Committees of Le Geyt Trust v Attorney General

Jurisdiction:	Jersey
Judge:	Bailiff
Judgment Date:	18 March 2004
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Text

[2004] JRC 53

ROYAL COURT

(Samedi Division)

Before:

M.C. St. J. Birt, **Esq., Deputy** Bailiff, **and** Jurats Quérée **and** Le Cornu.

In re The Le Geyt Trust

Between

Anthony Charles Swindell, Philip Francis Ozouf, Michael Anthony Payne, Doreen Joyce Leroy, née Scott respectively the Rector, Connétable and Surveillants of the Parish of St Saviour, and Mary Blampied, née Tory, wife of Michael Leonard Blampied;

Representors

all Members of the Committee formed to administer the Le Geyt Trust

and

Her Majesty's Attorney General

Convened

Advocate R. A. Falle for the Representors.

Advocate J. Hawgood for the Attorney General.

No Authorities

Housing Trust — under Trust, Representors not entitled to expend monies save for maintenance of properties — accumulated rental amounts to over £330,000 — application for leave to purchase an additional property with accumulated trust funds and for leave to lease the same.

Bailiff

THE DEPUTY

- 1 This is an application by the Trustees of what is known as the “Le Geyt Trust” for a variation to the terms of the Trust.
- 2 The Trust was established by a hereditary contract dated 9th May, 1903, whereby a Miss Le Geyt donated certain properties to the Trustees with the intention that they should be occupied, as was stated in the Deed in translation “*without payment by poor and respectable persons*”.
- 3 Although there was initially some doubt it has been established that in fact by an Act of the Court, of the same date, the Trust was constituted under the Loi (1862) sur les teneures en fidéicommiss et l'incorporation d'associations.
- 4 There was an amendment in 1993, because the Trust had run into difficulties in that, because it was letting the properties for no rent, it had no money to maintain them and they were, therefore, becoming derelict. Accordingly, the Court approved a complicated arrangement for a sale and development, the result of which was to leave the Trust with 5 modern dwelling units in Clos Le Geyt, St Saviour.
- 5 As part of that arrangement, it was realised that there ought to be some provision to charge rent so that the same problem would not arise in the future and the properties could be maintained. Accordingly, the Act of the Court, dated 4th February, 1993, said, at paragraph (c), that the Trust Deed would be varied:

“To permit the trustees to lease any of the dwellings from time to time existing

upon the trustees' land to those persons eligible to occupy the same on terms and at and for such rent or other consideration as the trustees shall in their absolute discretion decide."

- 6 What has happened since then is that, after one or two initial hiccups, the Trustees have been letting these five properties at the fair market rental as assessed by the Housing Committee. They have continued to let to deserving tenants in accordance with the original deed and the Court makes no criticism whatsoever of the choice of tenants by the Trustees.
- 7 However, the consequence of fixing the rents at the 'fair market rental' has been that the housing subsidy paid by the Housing Committee has kicked in so that part of the rental has been paid by the tenant and part by way of housing subsidy. Furthermore, the consequence of fixing rent at the fair market rental level has been that the Trust has accumulated a considerable surplus, because the level of rent is far more than is needed simply to maintain these five dwellings.
- 8 The accounts of the Trust show that as at 31st December, 2003, there was in fact a surplus of some £330,000 in the Trust. It follows from what we have said that a substantial proportion of this was no doubt contributed by the taxpayer by way of housing subsidy.
- 9 We take the view that this is quite contrary to the original intention behind the Trust, which is that by reason of the generosity of a private donor, free, or at any rate since 1993, very cheap accommodation should be provided to those in need. We do not think that it was consistent with the original intention that, in effect, the rent should be fixed at a level which required contribution from the taxpayer and it is the taxpayer who has substantially caused this surplus to build up.
- 10 The Trustees now wish to use the surplus to purchase an additional dwelling to be used for the same purposes and conveniently that property is adjacent to the existing properties. The proposed purchase is for a total of £265,000, with £5,000 for contents. Given the existence of the surplus we think that this is a very commendable and sensible use and we therefore give our approval to that purchase with a view to that property being managed and let in the same way and subject to the same trusts as the existing properties. However, we think that we need to clarify and amend the Act of 1993 in so far as it referred to the Trustees being entitled to such rent as they should in their absolute discretion think fit.
- 11 We propose that the Act of Court should make it clear that the level of rent must be fixed solely by reference to the need to maintain what will now be the 6 dwellings. We accept that the rental must be fixed at a level which brings in income which allows a form of sinking fund to be constituted and maintained so that there is adequate money to maintain these properties in a good and proper condition. But the rent should not be fixed at any higher level than that which is essential for that purpose. That in our judgment is the level of rent which is consistent with the original terms of the Trust Deed.

- 12 It follows that there will be a considerable reduction in the rent from that which is now charged and we would expect, from what we have been told, that certainly initially the level of rental would be such that it can be paid entirely by the tenants without any contribution from the housing subsidy.
- 13 We do not propose to be any more prescriptive. The Trustees of this Trust are of the highest reputation and responsibility and we have absolute confidence, now that we have explained the maximum level at which the rentals should be set, that the Trustees will loyally adopt that policy. Subject to those observations, we therefore grant the prayer in the representation to the extent of giving permission for the Trustees to purchase No. 1, Clos Le Geyt from Jonathan Robert Bull and Karen Louise Gibaut for £265,000; to permit the Trustees to lease that unit on terms similar to the letting administration of the other properties, and generally in accordance with the terms of the Trust, to permit the Trustees to reimburse themselves for the costs of this representation, and as I say we also amend the Act, or elaborate the previous Act, by making clear the basis upon which rents are to be charged in the way we have described.
- 14 Furthermore, Mr Falle has very properly accepted that the work by the Attorney General's Department in this case has been of the greatest assistance to the Trustees in establishing the position and, given that the surplus seems to have arisen substantially out of public funds, it seems entirely reasonable that the costs of the Attorney General in this respect should be reimbursed to him out of the Trust Fund.