

Addendum to submission of 17 June 2014

14 February 2018

Access to Justice Review
Chief Minister's Department
Cyril Le Marquand House
St. Helier
JE4 8QT

Senator Paul Routier
Chairman

Dear Chairman,

Submission on quality and depth of property contracts ; Addendum

1. Verification of the submission

For the purpose of the final verification of the correctness of the submission, as lodged on 17 June 2014, a law firm in Jersey was subsequently instructed by the respondent to carry out in-depth research in the subject matter.

The emphasis of the research was on statute and case law.

The particular law firm was chosen since the practise is not routinely involved in conveyancing.

The report, covering six pages, is appended to this addendum. For purposes of data protection the names of persons who are still alive, and the names of any parties still in existence, have been withheld. The report has been redacted throughout.

The report concludes under 'Conclusion':

“For the reasons I have set out above, it is my view that the prospects of successfully recovering the sums spent on the *Vue de Vicomte* through legal proceedings are not good. Moreover the issues that would have to be raised are legally complex.

Litigating them would almost certainly be a costly exercise.” etcetera

2. Earlier changes in legislation

Further historical research on the subject of property law was conducted by two persons, one of which was the author of the submission.

The research has revealed that changes were made to pre-existing legislation, in particular to the:

“ Loi (1880) sur la Propriété Foncière “

A report prepared under the auspices of the “Legislation Committee” refers. The report is directly relevant to the subject matter and is appended.

Quote, inter alia:

‘Each parcel of land had to be mortgaged separately and it was crucial that a conveyance of more than one parcel of land or unit of land identify the boundaries of each piece of land and the charges on it separately and distinctly. This particular requirement is contained at the end of Article 21 in the following terms –

“Si deux ou plusieurs ... par les contrats distincts”

In translation this reads –

“If two or more *corps de bien-fonds* are transferred by a single contract: the contract must, on pain of nullity, set out distinctly and separately the price of each *corps de bien-fonds*, and the *rentes*, charges, quit rents and servitudes, to which each of them is respectively subject, in the same manner as if they had been sold by separate contracts.”

For some time the legal profession has been troubled at the prospect of contracts being rendered void by reason only of a technical failure to comply with the explicit drafting requirements which the above provision imposes.

etcetera

For that reason, the Legislation Committee supports (as does the Law Society) an amendment which would remove the words “on pain of nullity” and the words “and separately” in order to ensure that the efficacy of any contract passed before the Royal Court should not be threatened by reason only of a technical irregularity in its drafting.

etcetera

Article 3 of the draft Law would amend Article 21 of the 1880 Law to achieve that result.

Article 8 of the draft Law would provide that any contract passed before the Royal Court either before or after the coming into force of the Law should not be rendered void or voidable by reason only of a failure to specify in the contract distinctly and separately the matters referred to in Article 21.’

Unquote

The “Loi (2000) (Amendement No. 4) sur la Propriété Foncière” was registered on 24 November 2000, and came into force the same day.

Its Article 3 and its Article 8 provide for the changes as those were shown to be intended to be made in the report prepared under the auspices of the Legislation Committee, as same report is quoted from above.

(L.41/2000)

3. Conclusion

It is thus apparent that the States of Jersey, as the legislative body, did enact a law in 2000 which law specifically and totally removed safeguards which existed from 1880. The safeguards ensured the quality and depth of property contracts by ruling those to be invalid if vital particulars were omitted from, or incorrectly drafted in, a property contract.

As the report which did underlie the law of 2000 will show, the *raison d'être* for the desire to make the changes to the 1880 law is incongruous.

The stated *raison d'être* is patently incongruous to the basic tenets of contract law.

The stated reason for the changes to the 1880 law is further patently incongruous to the basic tenets of consumer regulations.

Why should essential requirements such as, for instance, the position of boundary stones, measurements, compass directions, natural boundaries, etcetera, in a property contract be dismissed as 'technicalities', which can be watered down, approximated, or dispensed with, and that by law?

A grocery item has to have the weight and or volume stated on the packaging, on pain of the possibility of legal prosecution.

Why does such basic principle not apply to property contracts?

What precisely is being transferred to a buyer in a property contract?

The respondent maintains the submission of 17 June 2014 in full, and same should be read in conjunction with this addendum.

I am,

Yours faithfully,

Frederic J. Fokkelman
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encl. copy of redacted report by Baker & Partners

copy of report prepared under the auspices of the Legislation Committee

copy of Law L.41/2000

(There is no objection to this addendum being placed in the public domain)