Case No: A20CL091

IN THE COUNTY COURT AT CENTRAL LONDON

Royal Courts of Justice
Thomas More Building
Strand
London
WC2A 2LL

29 January 2015

B E F O R E:

HIS HONOUR JUDGE BAILEY

Longmire Appellant

-v-

Maldura Respondent

Judgment (Approved)

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1. **His Honour Judge Bailey :** This is an appeal under the Party Wall etc Act 1996 brought by adjoining owners, Mr and Mrs Longmire, in respect of a party wall award dated 5 August 2014. There is regrettably some animosity between the appellants and the party wall surveyor whom they appointed, Mr John Gillies. The details of that animosity really do not concern me at present; it is simply part of the background to this appeal. The respondent building owner is the owner of 21 Lower Addison Gardens, London, W14 8BG. A party wall notice in accordance with section 3 of the Act was served on the appellants, who are leaseholders of 23 Lower Addison Gardens, and also another leaseholder and a freeholder at the same address on about 12 February 2014. A dispute having deemed to have arisen between the appellants and the respondent, surveyors were appointed and the appellants appointed Mr John Gillies of the firm Johnson Gillies by letter dated 18 March 2014. It is accepted that that was a proper appointment under the 1996 Act. For the building owner a Mr Crumb was similarly appointed.

2. An award was eventually served on 15 July 2014. The award dated 10 July 2014 is signed by Mr Timothy Crumb, as the building owner's surveyor, and there is a signature, quite indecipherable, as the adjourning owner's surveyor but which it is accepted is not the signature of Mr John Gillies, rather it is the signature of Mr Jonathan Gillies, who is Mr Gillies' son. The son is also a surveyor and practices in what I take to be his father's practice.

3. As the award had not been signed by the appointed surveyor, the first appellant wrote on 19 July 2014 to Mr Gillies taking the point that as it had not been signed by Mr John Gillies it was an invalid award. That letter, at page 8, tab 1, of the bundle, is clearly addressed to Mr John Gillies FRICS. A reply was sent by Mr Jonathan Gillies on 25 July 2014. In his letter Mr Jonathan Gillies states that he fails to see why the party wall award that he himself rather than his father had signed should be invalid, and he deals with a number of matters of detail taken up by the first appellant, Mr Longmire.

4. It is fair to say that, during the course of the party wall procedure, the first appellant had shown a considerable interest in the matters that were being considered by the party wall surveyors and had on a number of occasions raised points and had done so with Mr Jonathan Gillies, whom he clearly had met and seen working in connection with the party wall award.

5. Mr Longmire responded to Mr Jonathan Gillies' letter of 25 July on Wednesday 30 July, stating that the party wall award, indeed the two party wall awards, were not valid because, as he says:

> "They have not been signed by Mr John Gillies as our "appointed surveyor". As you will be aware, it was Mr John Gillies who we appointed as our surveyor in writing on the 18 March 2014. However, it appears that Mr John Gillies has delegated to you the duties required of him as our appointed surveyor under the Act. I need not remind you that section 10(2) of the Act states that "all appointments and selections under this section shall be in writing and shall not be rescinded by either party"."

He then goes on to make the point that if Mr John Gillies had been unable to fulfil his statutory duties, he should have so informed Mr and Mrs Longmire so that an alternative appointment might be made.

6. It is apparent that Mr John Gillies accepted the point made by Mr Longmire that the first award was not valid. This is because on Monday 5 August 2014 he forwarded to Mr Longmire, as he puts it, "re-signed awards issued by me". He goes on to say:

> "As explained to you by phone, I have issued the awards. Jonathan and Tim (he is referring to another assistant of his in the practice) were acting as my assistants and this is accepted custom and practice."

He goes on to deal with a letter sent by Mr Longmire itemising some twenty six concerns.

7. The award that was enclosed with the letter of 5 August 2014 is dated 4 August 2014 and it is signed both by Mr Crumb and by Mr John Gillies. It is in precisely the same terms as the award objected to by Mr Longmire. Accordingly, it is submitted that in truth this re-signed award is not itself valid because Mr Gillies has not, in reality, considered the facts and matters in the award and made up his own mind as to the contents of the award, rather he has simply rubber stamped the award written by his son, Jonathan Gillies.

8. It is plain, as was made clear by Brightman J., as he then was, in the case of *Gyle Thompson v Wall Street (Properties) Ltd* [1974] 1 WLR 123, that the provisions of the Party Wall Act, then of course the London Building Acts (Amendment) Act 1939, must be closely followed. As the learned judge pointed out, the Act enables the one owner, the building owner, to carry out works affecting the property rights of his neighbour, the adjoining owner, subject to the statutory requirements governing such rights. The party wall surveyors appointed by the two owners are in a quasi-judicial position; they exercise statutory powers and responsibilities. As the learned judge put it:

> "It therefore seems to me important that the steps laid down by the Act should be scrupulously followed throughout and shortcuts are not desirable. I am not concerned with any question of the extent to which an irregularity is capable of being waived or cured by estoppel."

9. In the *Gyle Thompson* case a very simple point arose, namely whether it was possible for a party wall surveyor to be appointed other than in writing, as required by section 55 of the 1939 Act. It is plain, however, that the principle that the provisions of the Act must be scrupulously followed will apply to all aspects of the making and promulgation of a party wall award.

10. That a holder of a judicial or quasi-judicial office, or person exercising judicial or quasi-judicial powers, may not, except in exceptional circumstances, delegate his responsibilities is clear from the Court of Appeal decision of *Barnard v National Dock Labour Board* [1953] 2 QB 18. The point is clearly stated in the judgments of Lord Justice Denning and Lord Justice Romer. In the word of Lord Justice Denning:

> "While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication."

Lord Justice Romer:

> "A judicial function is one which, from its very nature, is incapable of being delegated."

The Court of Appeal also make the point, that must surely follow, that if an exerciser of a quasi-judicial function may not delegate it, neither may he ratify the act of another who has undertaken that function. That being quite plainly the law, it is clear that Mr Longmire was absolutely right when he took exception to the award issued by Mr Jonathan Gillies, the son.

11. The issue before me is whether the award, dated 4 August 2014 and forwarded to the parties on 5 August 2014, is also invalid in the circumstances which I have outlined. It seems to me that the true principle is this, that where a properly appointed party wall surveyor has issued and signed an award as being his award, it is to be presumed that he has properly conducted himself and that the award he has signed is genuinely his award. That can, however, only be a presumption, although I am bound to say it is likely to be a strong presumption. It is nevertheless open either to the appointing owner or indeed the other owner, for it is to be borne in mind that each of the two surveyors appointed to act in regard to the party wall award acts in relation to both owners, to seek to rebut the presumption and show that, on the particular facts of the individual case, it is not truly the surveyor's award and he has not conducted himself as required by the Act.

12. In seeking to rebut the presumption Mr Bickford-Smith relies essentially on three main facts. First of all that the re-issued award (that is the award dated 4 August 2014) is in precisely the same terms as the initial award. Secondly, he points to the very short space of time in which the further award was issued. The original award was dated 10 July 2014; however it was only on Wednesday 30 July that Mr Longmire, in writing to Mr Jonathan Gillies, the son, dealt sufficiently firmly and clearly with Messrs Gillies that it may be taken that the penny dropped and that Mr John Gillies Senior appreciated that it was not proper for him to allow his son to proceed to issue the award.

13. In making his submissions, Mr Bickford-Smith suggested that weekends were a time when professional men did not work, although that is a submission that has to be treated with considerable caution. As it happens it was on Monday 4 August that this award was signed and it was sent the following day marked 'Special Delivery'. Certainly it is a short space of time given that, one must assume, Mr Longmire's letter dated 30 July 2014 did not come to the attention of either, or perhaps both Mr John and Jonathan Gillies, until Thursday 31 July. So Mr Bickford-Smith is able to point to the fact that it was only on Thursday 31 July that Mr John Gillies appreciated that he should be issuing the award and here he is, on Monday 4 August, issuing the award. Certainly it is a short space of time. But it seems to me that it would be very dangerous for the court to proceed simply on the basis that there were only two or three working days between the acceptance by Mr John Gillies that he had to issue the award and his issuing the award. It cannot, I foresee, be argued that it is wholly impossible for a competent surveyor to consider the relevant matters and publish the award in the time it was available to Mr John Gillies.

14. But Mr Bickford-Smith is perhaps on stronger ground where he points to the fact that in the course of correspondence Mr Jonathan Gillies has, on a number of occasions, written in terms that make it plain that he considers that he himself is Mr and Mrs Longmire's party wall surveyor. He does indeed say so in clear terms, for example at paragraph 5 of his letter dated 25 July 2014 …

> "As to our previous correspondence, which I attach, I have indeed taken into account the matters you raise, but only those that are deemed to directly affect the party wall which would come under the Party Wall etc Act 1996. As your party wall surveyor, I am not obliged to discuss matters."

… and so on. Nevertheless, that point only goes so far. It is plain that while Mr John Gillies may well have considered that his son was acting as his assistant, it would appear that he himself saw that he was assisting to such an extent that he was acting as principal. Nevertheless, of course the point for consideration is not what Mr John or Jonathan Gillies thought prior to 30 July 2014, but what took place between then and the reissue of the award on 4 August 2014.

15. I have not had, and it would be very rare for a court have, oral evidence on a matter of this nature. I have not had oral evidence, from Mr John Gillies. However, I do have an email, dated 5 September 2014, sent by Mr John Gillies to Mr Richard Pavrey, who is the respondent's husband, copied to Jonathan Gillies, Timothy Crumb and the respondent. In the course of this email he says:

> "I have had detailed involvement with all matters in the award except the site inspection for the preparation of the schedules of condition taken on site by Tim Healey and approved by me. I had inspected the building before I was appointed and was well aware of the proposed relevant works. All of the decisions and responses were approved by me and I personally reviewed every piece of information and correspondence. The award signed by Jonathan was disputed by Longmire and, to be certain of compliance, I republished. We had helped Timothy Crumb with comments on the proposed award and, during this process, the name of the appointed surveyor was changed and the error was not identified as there were many other issues being discussed at that time. To compound it, I was on holiday when the bound awards arrived and Jonathan signed and published."

It is evident from the correspondence that Mr Gillies Senior was involved at important points along the process of negotiation and consideration of the award between the surveyors. I will not go through all the relevant correspondence. I am grateful to the detailed chronology prepared by Mr Isaac which shows the many occasions when Mr John Gillies, abbreviated JGF, was involved in the correspondence and, by implication, with consideration of the matters going to make up the award.

16. It is, in my view, a heavy onus that falls on an owner who seeks to persuade the court to go behind the signature of a surveyor who has signed the award and asserted to the parties that it is his award. Whilst I do understand the concerns of Mr and Mrs Longmire, in my judgment they have not discharged that heavy onus. It seems to me that there is no proper basis on which I may hold that the presumption that Mr Gillies had validly issued the award has been discharged. Accordingly, I dismiss this appeal.

End of judgment

We hereby certify that this judgment has been approved by His Honour Judge Bailey.

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