

IN THE ROYAL COURT OF JERSEY

19th October, 1987

BETWEEN **T.A. PICOT (C.I.) LIMITED** PLAINTIFF

AND **JOHN CHARLES SILVESTER and**  
**ELIZABETH ANN BECQUET, his wife** DEFENDANTS

*Mr. T.A. Picot on behalf of the Plaintiff.*  
*Advocate J.A. Clyde-Smith for the Defendants.*

COMMISSIONER P.R. LE CRAS: The case falls within a very small compass and being a civil case is of course to be dealt with on a balance of probabilities. For the plaintiff Mr Picot has very properly accepted that he had a duty to advise as to the sort of windows which ought to be fitted.

We have come to the conclusion that in fact Mr Picot did come and discuss the options with Mrs Silvester. On Mrs Silvester's side, she has given clear evidence that she would not have wanted the windows smaller than they were when Mr Picot came.

On Mr Picot's side, or on the plaintiff's side, there are several factors which occur to us, first, there was clearly a careful measurement as the windows do fit the embrasures in the manner in which Mr Picot expected them to fit. We find that his attitude in giving evidence is consistent, not only at the second meeting, but also in the letter of the 3rd May, 1984, in which he states, on which the company on his behalf states: "I have now had the opportunity of discussing this with my brother who I would advise you has confirmed the comments I made to you during our site meeting which were that the windows have in fact been manufactured to the correct size to fit your existing openings, taking into account the concrete sills are to be formed subsequent to installation of the new windows. My brother has also reminded me that he specifically asked you when rechecking sizes, following receipt of your order, what type of sill you wished to use and that when you confirmed that they would be concrete, advised you that we would allow for

the usual size tolerance for that type of sill, which in the event we have done. The concrete sill normally has an overall height of up to five inches and our frames were manufactured to suit".

Finally, of course, Mr Picot sent measurements to check and these measurements are on the evidence before us in our view, consistent not only with the windows which were manufactured, but also with the evidence of the Quantity Surveyor who states that the sills are of the minimum size which he would permit for this sort of window.

We have come to the conclusion that at the first meeting where the options were discussed, Mr Picot did explain the position and the defendant did agree and that it was only when she saw the first window insitu that she came to the conclusion that she had not agreed.

In these circumstances, although we are satisfied that neither side has in any way attempted to mislead the Court, we are satisfied that the plaintiff has on the balance of probabilities made out his case and satisfied the burden of proof and judgment is therefore given for the plaintiff.

(Discussion about costs between Commissioner Le Cras and Advocate J.A. Clyde-Smith acting for the defendants).