

ROYAL COURT

23rd January, 1991

15

Before: P.R. Le Cras, Esq., Commissioner, and
Jurats M.W. Bonn and M.J. Le Ruez

Between: Colin Byron Robinson and
Sandra Dawn Jayne, his wife Plaintiffs

And: Hotel l'Horizon Limited Defendant

Advocate P.C. Sinel for the plaintiffs
Advocate P. de C. Mourant for the defendant.

JUDGMENT

COMMISSIONER LE CRAS: In the summer of 1989 Hotel l'Horizon Limited, the Defendant, was looking to make further developments. One of those developments contemplated demolishing and rebuilding the staff wing to the East of the Hotel where fifty male staff were accommodated.

This proposed development was known to and discussed with Mr. F. Luce, an estate agent who had recently completed a valuation of the Hotel; and indeed he was asked by the Hotel to look out for suitable accommodation.

The upshot was that when Mr. and Mrs. Robinson, the Plaintiffs, put "Pine View" Guest House on the market, Mr. Luce, not unnaturally,

approached the Defendant which made an offer of £740,000 which was accepted.

"Pine View" was registered by the Tourism Committee to take 47 guests. Despite his denials in cross-examination and the possibility that the Defendant never mentioned it, we are satisfied that Mr. Luce knew why the Defendant wanted accommodation and the numbers which it wished to house; and indeed wrote to the Defendant's bankers on 11th July, 1989, in the following terms: (and I quote part of the letter)

"Firstly and probably most importantly, the Pine View Guest House is perfectly sited and sized for the Hotel l'horizon's needs. It is close enough to their place of employment to walk to and because of its size can comfortably sleep 50 plus persons. Quite simply there is no other property in the Parish of St. Brelade or indeed in the west of the Island that could perform that function....".

It would appear however that this letter was written at the request of the Defendant and without the knowledge or assent of the Plaintiffs.

What is clear beyond a peradventure is that Mr. Luce, who described himself as an Estate Agent dealing in hotels and guest houses and leisure related businesses, was not on that date aware of the Lodging House regulations.

However, by the time Mr. Luce wrote that letter the Defendant was well aware of the restrictions of the Lodging House Law. Mr. C.E. Coutanche, a director of the Defendant and their legal adviser, had telephoned Mr. W.H. Sugden on the 3rd July to make what he maintained was a preliminary enquiry. We note that his memorandum of that date mentions, inter alia, proper sized rooms.

In our view it was far more than that. Mr. Sugden, who is employed by the Housing Department and is, inter alia, the Lodging Houses Officer, and whose evidence was not contested, stated that he had first become involved with "Pine View" in July 1989.

Although he took no note at the time, we are satisfied that his letter of the 19th September, 1989, records the conversation. (And I read the second and subsequent paragraphs):

"It is quite right that back in July we had a lengthy telephone conversation about your client purchasing the "Pine View" Guest House to accommodate their staff and I explained in that telephone conversation that I could see the Committee having no objection to it provided that the rooms met with the Committee's rulings for new lodging houses, namely 150 square feet for a double room and 100 square feet for a single room and that there was the requisite number of toilets and showers, i.e. a ratio of 1 to 5 for those rooms that are not en suite.

I also recall mentioning at that time that any further applications for new lodging houses would have to be referred to the Committee as we had approached the total number of beds that the Committee had agreed to register. However, I did say that in the case of banks and hotel staff, they were prepared to make these exceptions and that I thought your client company had a very strong chance. At the same time I informed you that I would be very pleased to come out and inspect the building and offer my best advice as to the most economical use that could be made of the existing accommodation.

I then received your letter of the 12th July, 1989, stating formally your client company's intention of purchasing the property for staff accommodation. I would refer you to the penultimate paragraph and I quote: "I should therefore be obliged if you could confirm the Housing Committee has no objection to my client company's proposals". As I am not in the habit of making decisions for the Committee I then referred your letter to the next main Committee meeting which was on 4th August, 1989. At that time it was decided to defer any decision until the Committee had had an opportunity to see if the building could be of any use to the Housing stock.

It was then reconsidered again at their meeting of 18th August, 1989, when it was realised that a consent was not necessary for the purchase of shares. At that meeting the Committee insisted that if it were to be used for staff accommodation it would have to be registered under the Lodging Houses Law". (I leave out the next paragraph and the next one, but note that he mentions that he was out of the Island from the 4th to the 29th August). He goes on to say:

"With regard to the last paragraph in your letter to Mr. Luce, I would point out that it is not my insistence that staff accommodation must now be registered but that of the Housing Committee and the Lodging Houses Law, 1962, makes it obligatory to do so, and this was made abundantly clear to you in July". And he goes on to say:

"I have at all times, endeavoured to do my best to be constructive and helpful in this matter. I can state quite categorically that since the onset of discussions in July, you were made aware of the

Committee's thoughts on the conversion of guest houses into lodging house/staff accommodation".

He was quite adamant that consent would not have issued in any different form to that which he notified in a letter of the 18th September, 1989.

Why, armed with this information, the Defendant did not immediately avail itself of Mr. Sugden's offer and ascertain how many staff it could house was never explained to us.

Meanwhile Mr. Luce had complicated matters by putting in an unnecessary Housing application early in July.

He had, without any authority, signed it on behalf of the Defendant and the result was that it fell into the wrong channel, as it were, and was much delayed.

It appeared from the evidence of Mr. Sugden (who was surprised not to be asked to visit in July) that the course of events in the Committee was as follows: he went to the Tourism Committee to discuss their views on about the 12th July. That hurdle having been cleared, the application originally appeared before the Committee on the 4th August. The Estates Manager went to inspect the property, and once he, or, rather, the Committee, had decided against utilising the property themselves, as was the case, it was as certain as anything could be that consent would have issued.

The Committee discussed this on the 18th August and made an Acte in the following terms:

"The Committee recalled that it had considered an application for the sale of the property, "Pine View" Guest House, Portelet Road, St. Brelade, to the Hotel L'Horizon in order to accommodate staff of the Hotel, thereby enabling the Hotel to be extended into the existing staff accommodation to take more guests. The Estates Manager had visited the site at the Committee's request, but had concluded that the property was not suitable for use as States rental accommodation or for conversion into residential use.

The Committee, having received an oral report from the Senior Law and Loans Officer decided to grant consent for the sale of the "Pine View" Guest House, Portelet Road, St. Brelade, by Pineland

Limited to Hotel L'Horizon Limited for the sum of £715,000 for the realty and £25,000 for the contents, subject to the conditions that the property was registered as a lodging house under the Lodging Houses (Jersey) Law, 1962 and that the Manager's flat at the property should only be occupied by persons qualified under (a) to (h) of the Housing Regulations.

The Chief Executive Officer was authorised to take the appropriate action".

Turning back to the actions of the parties, there was, as is usual, some delay whilst the formal agreements were prepared. However this was, in due course, attended to and a meeting was arranged for the 22nd August, 1989.

The question of the accommodation of the staff was clearly in the minds of the Defendant and its legal adviser in the period running up to the 22nd August.

In addition to Mr. Coutanche's note of the 3rd July of his conversation with Mr. Sugden, which also bears a note of the telephone number of Mr. W. Honey, another director of the Hotel who is a chartered accountant and, in effect, the financial controller of the Hotel, there is evidence of other conversations.

On the 28th July, Mr. J.D.P. Crill, a solicitor and partner in Mr. Coutanche's firm, who was dealing with the purchase during Mr. Coutanche's absence on holiday, spoke on the telephone to Mr. P.A. Connew of the Housing Department and made the following note:

"re Pine View.
They have received application for lodging house.
Currently considering position generally if Tourism de-reg.
Will let me have answer next week".

He spoke again to Mr. Connew on the 7th August when he noted:

"Committee did consider last week - formal application been deferred at present - 1) considering their position generally re purchasing of guest houses for staff - should be just a fortnight!"

On the 10th August he spoke to Mr. Philpott, an officer of the Tourism Committee, and although his conversation dealt with another possible way in which the Defendant might use "Pine View", he notes:

"N.B. Lodging 100 square feet - Tourism 70 square feet".

We take that as a clear indication that there must have been some discussion as to room sizes.

Mr. Coutanche then returned from holiday. He confirmed that he would have read the notes.

Although Mr. Coutanche advised his clients that use of "Pine View" as a Lodging House, and hence the necessity of complying with the regulations made thereunder was the only course open to them, it is clear that the Directors of the Defendant were hoping to use "Pine View" in other ways.

Mr. Honey stated that they had three alternatives in mind:-

(a) to call "Pine View" a staff house, in the hope apparently encouraged, inter alia, by a senior Island Politician, that it would fall under neither the Tourism nor the Housing Committees (the latter now being responsible for Lodging Houses).

(b) to continue to be registered under the Tourism Committee but to run it as a guest house for staff only.

(c) to register as a lodging house.

We are satisfied that Mr. Honey went to the meeting of the 22nd August with those three alternatives still present in his mind and we were left in no doubt that the first one was his most favoured option; and that the Tourism and liquor licences of "Pine View" were also bought at the same time to keep the second option open.

As a result of the possibility of the availability of the first option, Mr. Honey stated that there was a fear that if Mr. Sugden gave a ruling it would be difficult to use option (a). Put another way, if they were "caught" under the Lodging House regulations, option (a)

would disappear. We should add that at no time do we consider that the Defendant would have acted in any way which was illegal.

However, the effect of this caution about the result of a visit by Mr. Sugden, and despite the fact that Mr. Coutanche had written on the 10th July to the Housing Committee in the following terms:

"I refer to our recent telephone conversation and write to formally set out my client company's intentions in respect of the guest house.

My client company, Hotel L'Horizon Limited, intends to acquire the above property by share transfer. A housing application has been submitted by Broadland Estates Limited in respect of the A-B accommodation at the guest house.

The property is being purchased to accommodate staff of the Hotel L'Horizon which will enable the hotel to take more guests. I should therefore be obliged if you could confirm that the Housing Committee has no objection to my client company's proposals.

If you require any further information please do not hesitate to contact me".

And, that his firm had followed this with a letter on the 24th July:

"Further to our recent letter and subsequent telephone conversation with Mr. Pollock, we write to confirm that our client company requests that the above Guest House be registered as a lodging house in order that it may be utilised by our client company for staff accommodation".

And, that it was clear that he, or his office knew that the application was proceeding through the Housing Department; and notwithstanding his advice that registration as a Lodging House was the only route open to the Defendant, Mr. Coutanche told us that on his return from holiday in about mid August, option (a) had been raised so that he was asked by the Chairman of the Company, Mr. David Lloyd Jones, not to pursue the application with vigour as to do so would be to close the door. He did not remonstrate with the Chairman, but neither did he withdraw the application which had been made.

This brings us to the meeting of the 22nd August. Prior to that meeting, Mr. Coutanche knew of the Acte of the Housing Committee of the 18th August.

The meeting of the 22nd August was a long one, and was split into two parts, the morning session lasting three hours, with a further hour in the afternoon. It was attended by, inter alia, the Plaintiffs and their legal adviser, Mr. Meiklejohn, whilst the Defendant was represented by Mr. Honey and Mr. Coutanche.

Inevitably, changes were made to the draft agreement. Amongst the more important changes were a stipulation that the guest house be delivered with vacant possession on the 25th September, earlier than was originally intended. The Plaintiffs could not covenant to effect this immediately and a stay until 31st August was agreed to see if they could covenant to do so.

No housing consent for the change of use to a lodging house had been received, and there was discussion on this point.

The agreement was amended to take account of this point, and both agreements (one for the guest house and one for the business) now contained the following clause:

"10(ii) The consent of the Housing Committee in a form satisfactory to the Purchaser to the change of use of the property from a Guest House to a Lodging House under the Lodging Houses (Registration) (Jersey) Law 1962, as amended".

There was clearly some further discussion for Mr. Coutanche noted and read over to Mr. Meiklejohn what he proposed to write in a subsequent letter, which he did on 25th August:

"2. The Agreements were exchanged between us on the 22nd August subject to the following conditions namely that by close of business on 31st March 1989:-

(a) Consent shall have been received on conditions acceptable to my clients from the Housing Committee to the Registration of "Pine View" Guest House as a lodging house under the Lodging Houses (Registration) (Jersey) Law, 1962;

(b) Your clients being able to covenant to hand up vacant possession of the property on a day between the 23rd and the 25th September 1989, that is to say free of all tenants, licencees, guests or other occupiers and

free of any commitments to future occupancy of any part of the property".

Mrs. Robinson stated that she could not recall the exact words used by Mr. Coutanche, but that he had said there was no problem, he had spoken to someone at Housing and that everything was just a formality. She was adamant that no numbers were mentioned at the meeting. She would not have signed she said if she had understood that they could withdraw, which we took to be on the basis of numbers.

Mr. Robinson stated that at the meeting, the question of Housing was brought up, that Mr. Coutanche stated that everything had been done, that it was a formality and that the reason it was so late was that one of his assistants had been away and more or less apologised for not having got down to it sooner. No one spoke to him of the numbers the Defendant expected to accommodate.

In cross-examination, he maintained that "we" (that is Mrs. Robinson and himself) were not interested in the numbers which the Defendant could put in and that this was never discussed with them. He did, he said, assume they wanted fifty; neither he nor anyone else then knew that twenty would be the number which could be lodged under the regulations. He was merely told, he reiterated, that the Defendants needed the formality of housing. He understood it to be "in the works" and specifically rejected suggestions that Mr. Coutanche had said he did not know the terms or when it would be received, nor that he would expect at least forty seven on the Housing consent.

Mr. Meiklejohn, when asked what stipulations there were for the purpose stated there were none as to the quantum of staff which could be accommodated.

At the meeting it was clear that a condition had to be attached because the Housing consent had not yet come in, but Mr. Meiklejohn said that Mr. Coutanche had stated that the application would now be a mere formality. This was discussed in the morning and he was quite clear that there was never any mention of numbers or that it was necessary to have accommodation available for a certain number. The only time we looked at numbers, he said, was when Mr. Honey and

Mr. Coutanche were adding up the Tourism figures. He went back, he said, and got the agreements typed up. The only further discussion was as to the completion date.

He agreed that Mr. Coutanche had written down and read over to him the terms recorded in the letter of the 25th August, and that he was happy with it. He did not recall why Mr. Coutanche had dealt with the Housing matter again, but that Mr. Coutanche had intimated that after signing the agreement he would transpose it into a letter. It did not strike him that there was any difference as between the letter and clause 10(ii) of the agreement.

He agreed that his clients certainly did not say that they were aware of any difference between clause 10(ii) and paragraph 2(a) of the letter.

Mr. Honey agreed that they were interested in the Tourism figure. He produced a note which he stated to be contemporaneous which read: "Consent to convert to lodging house is O.K. but there may be conditions, e.g. fire extinguishers and numbers in rooms, probably not worse than for hotels" and he ends "Sugden - view of lodging houses, Harris - assistant". He agreed that the Defendant wished to buy the licences to keep the Tourism option open, and that the Defendant was still considering all three alternatives outlined above. He thought that the last note, numbers probably not worse than hotels, would probably have come from Mr. Coutanche.

He was asked why so little emphasis had been put on numbers of which the Plaintiffs and Mr. Meiklejohn were unaware, and in reply stated that he knew the principle of the lodging house was alright and hence the only remaining problems were, for example, numbers, but that nobody at that stage thought it was a major problem. He thought he had raised that with Mr. Coutanche at the meeting. He agreed that it had made no impression on the Plaintiffs minds, although he added that there was no reason to have the condition except on numbers. He still wished then to leave his options open.

Mr. Coutanche confirmed that he had dictated the words to Mr. Meiklejohn who asked him to confirm in writing, and Mr. Meiklejohn agreed that they had been read over to him. There must be, Mr. Coutanche said, an end to conditions, and the Defendant needed to know for example, whether the Plaintiffs could vacate by the end of the month.

He agreed that he had reported to the meeting that "consent was a formality" or "that registration is OK". He could not however recall if numbers were mentioned nor that he had said that they would not complete if they did not get accommodation for fifty staff.

He considered that the agreement comprised the signed document as supplemented by his letter of the 25th August.

He conceded that he may not have volunteered the information. He was pressed on this but maintained he did not feel obliged to volunteer reasons. It would have been for the other side, who were legally represented, to ask.

He was asked whether his letter was intended to change the text. He at first replied "yes". He amended his reply to say that it was intended to reduce to writing the oral undertakings at the meeting, and on further consideration replied that he really did not know. Asked whether he was aware that there was a substantial difference he replied "no". Asked whether he intended there to be a difference, he replied he did not know but that it seemed logical to re-word the oral agreement. He was not sure if it varied and he did not recall agreeing the re-wording with Mr. Meiklejohn.

Later in answer to questions by the Court he stated in answer to this question: "Was the intention, by having the Contracts signed and exchanging them, to bind the other party but to leave you free if the numbers were inconvenient?". Although he modified his reply the next morning, his immediate answer was: "That would have been the advice I would have given my clients, yes, Sir". He also added in response to a further question: "Do the words stated in 2(a) in the letter reflect what was agreed with Mr. Meiklejohn?". He replied "absolutely". "Do

the terms of condition 2(a) reflect those of condition 10(ii)?" "Except that they are worded slightly differently they are meant to relate to exactly the same thing". In answer to the Court who asked: "Are they intended to mean the same thing?", he replied that, first of all, clause 10 of the agreement contained no time limit and, second, that they only applied their minds to the time limit and that it in effect meant the same thing.

What happened next may be briefly stated. The Plaintiffs were able to give vacant possession. The 31st August deadline was delayed until the 8th September by which time it was obvious that there would be some delay in obtaining consent from the Island Development Committee for the Defendant's developments. On the 12th September Mr. Coutanche wrote to say that they did not wish to proceed and shortly thereafter Mr. Sugden measured up and found that, without alterations, only twenty people could be accommodated at "Pine View" under the Lodging House regulations, which was clearly insufficient for the Defendant's requirements.

On 12th September the Defendant notified its intention to withdraw.

We do not need to consider in detail what prompted the letter of the 12th September for as Counsel for the defence rightly, and we think inevitably, conceded that on the 8th September, his clients were in breach. This however he maintained was not the end of the case.

The letter of the 12th September was in the following terms:

"Dear Advocate Clyde-Smith,

PINE VIEW GUEST HOUSE

Further to earlier correspondence, I believe you are attending to this file in Advocate Meiklejohn's absence. I refer to paragraph 2 (a) of my letter of 25th August to Advocate Meiklejohn.

Since that date we have obtained from the Housing Department details of the minimum room areas required for certain numbers of staff residing in lodging accommodation. I have also discussed the matter upon a number of occasions with Mr. Sugden.

I regret to say that it is abundantly clear that the "Pine View" will not accommodate as many staff as the clients had anticipated. One can even go so far as to say that one will not be permitted to house as many staff in the premises as the number of guests it is presently permitted to take.

My clients have been given the impression (and I am bound to say I think the wrong impression) that they may effectively disregard lodging house registration requirements. I have advised them that they are ill-informed and indeed I have already received a telephone call from Mr. Sugden "warning" that any attempt to circumvent the lodging house requirements will result in his investigating the matter.

I regret therefore that my clients will not be able to proceed with this transaction as the property does not suit their requirements and it is perfectly clear that any consent from the Housing Committee will be on conditions unacceptable to them.

I would be grateful if you would make the appropriate arrangements to return the deposit which has been paid and if you would convey to your clients my clients' sincere apologies for the obvious inconvenience that this decision will cause.

Yours sincerely,

"C.E. COUTANCHE".

Mr. Meiklejohn's reply of 15th September was in the following terms:

Dear Mr. Coutanche,

Pine View Guest House

I refer to your letter of the 12th September and to our subsequent telephone conversations. I make the following comments:-

1. Having reviewed my notes of the meeting on the 22nd August, I note that you stated the necessary application to the Housing Committee under the Lodging Houses Law had been made on the 10th July this year. As I recall, the Housing Committee had treated the application as if your client Company were purchasing the freehold of the property in the ordinary way. You had spoken with Nigel Le Quesne about the matter and there was some embarrassment at the Housing Department at the way the matter had been dealt with. You gave the clear impression that as a result of your conversation with Nigel Le Quesne, consent would then issue as a mere formality. It was in the light of these assurances that my clients agreed to allow the condition in the first place. Indeed as a result of impression created at the meeting they do not concede that the wording of paragraph 2(a) of your letter adequately reflects what was actually agreed. They state that their signing was subject

only to consent issuing to the application submitted on the 10th July. I re-iterate that you said this was a formality.

2. Further to our telephone conversations of the 13th and 14th September you will be aware of the meeting which took place at the Pine View Guest House attended by Mr. Sugden of the Housing Department, Frank Luce, the Estate Agent, myself and Wendy Lambert of your office. It is clear that if your client Company were to use their best endeavours, they would be able to obtain consent under the Lodging Houses Law for the occupation of 46 staff. Thereafter Mr. Sugden did not rule out the possibility of further development allowing yet more staff to be housed.
3. Therefore, it is clear that ultimately the Guest House will accommodate as many staff as the number of guests it is presently permitted to take. Your client Company cannot reasonably have expected to house larger numbers. Indeed from our perusal of the Tourism certificate at the meeting held on the 22nd August, it was apparent that Mr. Honey was not thinking along those lines. Therefore, if consent does ultimately issue, as it can, for 46 persons to occupy the Guest House, consent will have issued in a form which would have satisfied your client Company from withdrawing from the transaction for this reason. I do not concede that the situation is now somehow different because your client Company has to carry out work to enable it to accommodate 46 people.
4. As it is however, it has been made clear to Frank Luce, the Estate Agent, and Mrs. Robinson by Gerald Fletcher, the Manager of the Hotel L'Horizon and a servant or agent of your Company, that the above reason is not why your client Company has decided to withdraw. Mr. Fletcher told both persons that it is because of the delay in the processing of the I.D.C. application which has incensed your client Company. Mr. Luce was told "nobody messes Clipper Hotels around and gets away with it." In my view the fact that the appointment for Mr. Fletcher to meet Mr. Sugden on the 1st September was cancelled, confirms this view. Your client Company had patently decided to withdraw before even allowing an application under the Lodging Houses Law to be made.
5. My clients were devastated by the terms of your letter. They have diligently met each of your client Company's requirements and if this transaction were to collapse now would be left with a Hotel without guests, staff or advertising for next year.
6. In conclusion, I suggest your client Company is seeking to use the Lodging House requirement as a convenient let out. As it has not even applied for consent (according to Mr. Sugden), it therefore cannot withdraw in this manner. I have advised my clients that if your client Company continues to seek to withdraw from the agreement based on its present argument, that my clients have a good cause of action against your client Company for specific performance

or contractual damages. I would seek to rely heavily upon the comments made by Mr. Fletcher to Mr. Luce and Mrs. Robinson.

I trust that the meeting which took place at the "Pine View" will have clarified matters so as to enable your client Company's application to be processed and approved and the transaction completed.

I look forward to hearing from you.

Yours sincerely,

"S.A. Meiklejohn".

No formal reply was received to this and, on 25th September, Mr. Meiklejohn wrote again in the following terms:

"Dear Mr. Coutanche,

Pine View Guest House

I refer to our telephone conversation of the 21st September and to the transaction between our respective clients in connection with the above Guest House.

My instructions are clear. Completion of the transaction must take place today as the Share Vending Agreements stipulate, failing which your client Company will be held in breach of both Agreements.

If your client Company fails to complete today I have instructions to commence proceedings against it seeking specific performance and/or damages.

I look forward to hearing from you urgently in connection with a time for completion.

Yours sincerely,

"S.A. Meiklejohn".

To this letter, Mr. Coutanche replied on the same day, as follows:

"Dear Advocate Meiklejohn,

PINE VIEW GUEST HOUSE

I have received your facsimile of 25th September. It is a shame that your clients are not prepared to give mine further time to deliberate.

As I understand Mr. Sugden's letter of 18th September, the maximum number of staff who could immediately occupy the guest house is

twenty-four. At paragraph 3 on page 2 of his letter Mr. Sugden suggests that it would be possible to achieve thirteen double rooms and six single rooms with little alteration. That would still only give a maximum occupancy of thirty-two.

Condition 2 (a) attached to my letter of 25th August was perfectly clear in its terms and I also believe the discussion at the meeting on 22nd August made it quite clear that the number of persons who my client company would be permitted to put in residence at the Pine View was a material consideration.

The guest house was registered for forty-seven; without alteration it is suggested my clients would be permitted to have the property occupied by only one more person than half that number and, even with some alteration, only approximately two-thirds of that number.

In such circumstances I regret to say that any consent of the Housing Committee would be unacceptable to my clients.

My clients are naturally concerned that yours have been inconvenienced and distressed by this matter but they cannot be expected to pay £750,000 for accommodation in which they may only immediately house twenty-four employees, and not that many more after some expenditure, the level of which is not yet known.

So far as future expansion of accommodation is concerned, Mr. Sugden quite rightly says in relation to the public rooms: "It is very difficult to give an estimation here"; so far as the amalgamation of certain rooms is concerned, he says; "It may be possible to add a further five doubles".

When we spoke on Friday and you indicated your clients may give further indulgence, I spoke to my principals who instructed me to contact Mr. Sugden with a view to clarifying what one might be able to achieve in the future and endeavouring to approximately estimate the expenditure involved. Your clients' change of heart since Friday does not unfortunately give my clients that opportunity.

I would re-iterate therefore that my clients are, in effect, being asked to complete today only in the certain knowledge that for the stated consideration they may house twenty-four staff. That is an unacceptable condition and accordingly I regret that my clients will not complete today.

Yours sincerely,

"C.E. Coutanche".

P.S.

I have just been informed that the key of Pine View has been delivered to my office. I am sure you will agree it would be futile to pass the key back and forth and I shall therefore hold it at your disposal but let it be perfectly understood that my doing so in no way alters the above".

The defence to the action may perhaps conveniently be summarised at this point.

Put very briefly it is this. That numbers were mentioned at the meeting, that the letter of 25th August either amplified or explained the contract, and formed part of it so that it contained conditions as to, inter alia, numbers; and that the Plaintiffs having saved the contract the Defendant could withdraw if the lodging house conditions were a proper factor (which they were) even if this were not the only factor and the others were ones which would not entitle them to withdraw.

We think we therefore have first to ascertain the terms and meanings of the contract and whether any conditions imposed were fulfilled, and second whether the contract was in fact saved before giving consideration to the final part of the submission.

Our first task, therefore, is to decide what are the words which formed part of the contract.

We are quite certain that as a matter of fact the Plaintiffs did not, as claimed by Mr. Meiklejohn on the 15th September in his letter, appreciate that there was any change to what they had signed nor would they have accepted it if they had. Their minds were focused on the date and the registration.

Our view is that the changes proposed in the letter of the 25th August, are highly significant, much to the disadvantage of the Plaintiffs and never agreed by them. The agreement reached by the parties for the purpose of this hearing are those contained in clause 10(ii) of the agreement.

Turning now to the agreement there is no doubt in our mind but that in its normal and natural sense and in the contemplation of the parties it meant no more than that the consent of the Housing Committee was sought to the change of use. It was known that they had agreed, but no official communication had yet been received. As to the

conditions imposed, in our view, there were none. The Housing Committee, in effect, merely said "yes".

We therefore find that the condition in the agreement has been met, and the Defendant is therefore in breach of its agreement to purchase.

Although it is not now in point, we have to say that we do not find Mr. Meiklejohn's letter of the 15th September elects to keep the contract alive, but merely offers the Defendant the chance to revive it: a chance which it rejected on receipt of that letter by its silence, and again on the 25th by the terms of its reply to Mr. Meiklejohn.

We therefore find for the Plaintiffs.

We have now to consider the sum which we should award.

We will refer to the case of the Viscount -v- Treanor (1969) JJ 1243 and at page 1244 we note that the Court there stated:

"The stipulation we have quoted is clearly what Pothier calls "Une obligation pénale". That "obligation" he says (Traité des Obligations, Part 2, Chapter IV Article 338)-

"...est, comme nous l'avons déjà vu, celle qui naît de la clause d'une convention par laquelle une personne, pour assurer l'exécution d'un premier engagement, s'engage, par forme de peine, à quelque chose, en cas d'inexécution de cet engagement."

He goes on to say in Article 343-

"Cette peine est stipulée dans l'intention de dédommager le créancier de l'inexécution de l'obligation principale: elle est par conséquent compensatoire des dommages et intérêts qu'il souffre de l'inexécution de l'obligation principale."

And in Article 346-

"La peine stipulée en cas d'inexécution d'une obligation peut, lorsqu'elle est excessive, être réduite et modérée par le juge."

If, as we believe him to be, Pothier is a surer guide to the Jersey law of contract than are the English authorities, then we have no need to consider whether the conventional sum stated in

the quoted stipulation represents a penalty or liquidated damages. Our task is only to determine whether the sum is or is not excessive.

It can be inferred from what Pothier says later in Article 346 that the penalty will not be considered excessive unless it exceeds the maximum damages which the obligee could have suffered as a result of the breach of the principal obligation".

No evidence was called by the Defence on this point, nor did Counsel refer to it in his address. Counsel for the Plaintiff was however at pains to do so. It is quite clear that the Plaintiffs who sold the Guest House elsewhere in 1990 for £690,000 have suffered considerable loss.

They lost the sale of the guest house on 25th September, 1989, sold for a lesser price during 1990, have lost interest on moneys which they would have received on 25th September, 1989, had expense in relocating their guests, in order to accelerate vacant possession and have had inevitable worries as a result of the Defendant's refusal to complete.

We are satisfied that they can in no way have lost a sum equivalent to the stipulated penalty. In the circumstances however we consider that an award of £150,000 is the appropriate figure and we give judgment accordingly.

Authorities

- Housing (Jersey) Law 1949 and all regulations and amendments.
Lodging Houses (Registration) (Jersey) Law 1962 and Lodging Houses (General Provisions) (Jersey) Order 1962 and amendments.
Viscount -v- Treanor (1969) JJ 1243.
Hanby -v- Moss (1966) JJ 625.
Basden Hotels Limited -v- Dormy Hotels Ltd (1968) JJ 911.
Pothier: Tome Premier, Partie II Chapitre V Acts 338-365.
Pothier: 1827 Edition Tome II pp 91 and 92; 205 and 206; 264.
Pothier: 1827 Edition Tome I pp 101 to 114.
Le Ruez -v- Le Ruez (1980) JJ 229.
Blackburn -v- Kempson (1977) JJ 1747.
Takilla -v- Ernest Farley and Son Limited (22nd July, 1986) Jersey Unreported.
Ernest Farley and Son Limited -v- Takilla Limited (11th May, 1989) Jersey Unreported.
Luxor (Eastbourne) Limited and Others -v- Cooper (1941) AC 108.
Simpson -v- Foxon (1907) P. 54.
4 Halsbury 12 paras. 1459 to 1508.
Granite Products -v- Renault (1961) JJ 163.
Wallis -v- Taylor (1965) JJ 455.
Ferbrache -v- Bisson (1981) JJ 103.
Grimshaw -v- Ruellas (1976) JJ 299.
Docker -v- Hyams (1969) 3 All ER 808.
Chitty on Contracts 24th Ed'n. pp 350-353; 701-704; 1079-1083.
4 Halsbury 9 pp 246-247; 353-356.
Re Electrical Supplies & Machinery (Wholesale) Ltd (23rd March, 1990) Jersey Unreported.
Sarum Hotel Ltd -v- Select Agencies (Jersey) Ltd and Shelton (1987-88) JLR 343.
A.G. -v- Barette (14th December, 1990) Jersey Unreported.