

Neutral Citation No. [2003] NICH 4

Ref: **GIRF3950**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: **03/06/2003**

2003 No. 779

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**IN THE MATTER OF A CONTRACT DATED 17 FEBRUARY 2003 AND
MADE BETWEEN (1) DILJIT SINGH RANA AND (2) MICHAEL JAMES
McCANN AND MAXINE ANNE McCANN FOR THE SALE OF LEASE OR
PROPERTY KNOWN AS 233 UPPER MALONE ROAD BELFAST**

BETWEEN:

DILJIT SINGH RANA

Plaintiff;

-and-

**MICHAEL JAMES McCANN
And**

MAXINE ANNE McCANN

Defendants.

GIRVAN J

[1] This matter comes before the court by way of a summons under Section 9 of the Vendor and Purchaser Act 1974. The plaintiff ("the vendor") seeks a declaration that the sale of the land known as 233 Upper Malone Road, Belfast ("the property") by the Belfast City Council to the plaintiff on foot of a lease dated 18 December 1997 between Belfast City Council and the plaintiff was not by virtue of the consent thereto given under seal by the Department of Health and Social Services on 12 November 1997 pursuant to section 18 of the Charities Act (Northern Ireland) 1964, in breach of the trust created by and under the conveyance of lands and including the property dated 5 December 1959 ("the 1959 conveyance") made between Lady Edith Stewart Dixon DBE of the one part and the Lord Mayor Aldermen and

Citizens of the City of Belfast on the other part. The plaintiff seeks a declaration consequent upon that that the plaintiff has shown good title in the property in accordance with the above mentioned contract for sale.

[2] The relevant lands form part of lands which were granted and conveyed by the then Belfast Corporation under the 1959 conveyance. Under the terms of the 1959 conveyance it was declared that the lands and premises should be held by the Corporation on the trusts therein set out that is to say:

“(1) To use the said house and lands for the greatest good of the citizens of the city of Belfast and in particular to use the said lands as a public park and public playing fields and not to erect any building thereon save such as may from time to time prove necessary for such purposes.

(2) The said public park and playing fields shall be known as the Sir Thomas and Lady Dixon park and Sir Thomas and Lady Dixon Playing Fields respectively.”

[3] The vendor acquired part of the premises conveyed under the 1959 conveyance on foot of a lease (“the lease”) dated 18 December 1997 for 900 years granted to the vendor by Belfast Council as successor to the Corporation. Before the Council completed the lease it obtained the consent of the Department of Health and Social Services (“the Department”), the then responsible Department, under Section 18 of the Charities Act (Northern Ireland) 1964 given on 12 November 1997. Under the terms of the lease the vendor covenanted inter alia to use the premises solely for residential purposes, a use clearly different from and inconsistent with the use envisaged by the trusts declared in the of 1959 conveyance.

[4] By contract entered into on 17 February 2003 the vendor agreed to sell the premises for £295,000. The purchasers have raised the question whether the vendor acquired a good and marketable title from Belfast Council bearing in mind the terms of the trusts imposed upon the Council’s predecessor is title under the 1959 conveyance.

[5] Mr Dunford on behalf of the vendor argued that the premises in sale were discharged from the trust affecting them under the 1959 conveyance by virtue of the Department’s consent to the sale of the premises. He contended that the consent and the approved terms of the lease make clear that the premises could be used for purposes different from the use required by the trust. He argued that the whole scheme of the provisions of the 1964 Act is to enable charity trustees to be empowered to deal with and dispose of charity lands freed and discharged from the restrictions and obligations arising

under the relevant charitable trusts where to do so is in the interests of the charity. The effect of the section 21 of the 1964 Act is to provide that any sale of the trust property shall have the same effect and validity as if the terms of the trust effecting the charity concerned had contained express terms conferring power to effect the sale.

[6] When authorising the creation of the lease the Department purported to act under section 18 of the 1964 Act. Under section 18(1) it is provided that where the trustees of a charity apply to the Department for power “to sell, exchange or mortgage any land belonging to the charity or to surrender any lease held by the charity” and the Department is satisfied that the proposed sale etc would be for the benefit of the charity the Department may confer power to sell etc. The disposal in this case was effected by way of a 900 year lease and the Department approved the terms of the lease. Mr Dunford was concerned that the Department should arguably have acted under section 17 of the 1964 Act which confers the power on the Department to permit a letting of any part of land held on charitable trusts “on building repairing, improving or other leases”. Before this matter came before me by way of hearing the vendor’s solicitors had approached the Department to regularise the position by obtaining retrospective authority approving the creation of a 900 year lease. The Department however has taken the view that it had acted properly under Section 18 and that the 900 year lease constituted a sale falling within the provisions of Section 18.

[7] Under Section 45(3) of the Interpretation Act (Northern Ireland) 1954 where an enactment provides that a person may “dispose of” land he may deal with the land in a variety of way including selling it or leasing it. That section does not directly assist in relation to construing section 18 of the 1964 Act since the 1964 Act does not use the word “dispose” but it does make clear that a disposal of land may be affected by way of sale or lease. In this case the Department was asked to authorise the sale of the property and the terms of the proposed lease were attached to the application and referred to in the Department’s consent. It is clear that the Department approved the terms of the lease. The Department, having approved the lease terms while it purported to confer a power of sale under section 18, was at the same time approving the creation of a lease of the property on the 900 year term. Whether the disposal constituted a sale falling within section 18 or should have been treated as a matter falling within section 17 the fact is that when one construes the Department’s consent documentation it clearly did approve the lease and the terms thereof. In these circumstances it seems to me to be clear that the Department actually did approve the creation of the lease and authorised the transaction so while it did not purport to expressly act under section 17 and referred to section 18 the consent would be sufficient authority to justify the trustees creating the lease which they did. In any event I am satisfied that in the context of land transactions in Northern Ireland the disposal of this property by way of a long lease can properly be regarded as a

sale of the property. There is no real difference between the term of 900 years and the disposal of a fee simple interest and very frequently in the context of Northern Ireland land law disposal of property is effected by way of long lease in circumstances that are regularly regarded as effectively sales of the property.

[8] The central question remains whether on the authorised disposal of the premises to the vendor the vendor took the property freed and discharged from the trusts affecting it. If he did then at this point he has a good marketable title to the premises. A charitable trust may confer an express power of sale on the trustees. In such a case it has never been suggested nor could it be that a purchaser from trustees is bound by the continuation of the trusts that bound the trustees. Such a purchaser would not be concerned with how the proceeds of sale are applied. The purchaser will in my view clearly take the premises freed and discharged from the trusts. The trustees would of course be under an obligation to ensure that the proceeds of sale are applied in a proper way in accordance with the terms of the trust, if necessary by applying for the settling of a cy pres scheme. Where there is no express power of sale conferred on charitable trustees in a trust document the scheme of the 1964 Act is to enable the trustees to apply to the Department to authorise the disposal. Section 21(1), as Mr Dunford pointed out in argument provides:

“Any sale ... lease ... or other transaction effected in pursuance of any power conferred by the Department under sections 17 to 20 shall have the same effect and validity as if the terms of the Trust affecting the charity concerned had contained express terms conferring power to effect the sale ... or lease.”

The purchaser accordingly can deal with the trustees as if they have an express power of sale and the purchaser in such a situation is in the same position as a purchaser from a trustee who is exercising an express power of sale. Such a purchaser will take the property discharged from the Trust theretofore affecting the property. The purchaser is not concerned with the proper application of the proceeds of sale. To construe the legislation in any other way would be to frustrate the policy of the legislation which is aimed at enabling charity lands to be sold so as to take them outside the charity and to leave the trustees with a sum available for application in accordance with the terms of the Trust.

[9] In the circumstances I am satisfied that the plaintiff is entitled to a declaration in the terms of paragraph 1 and 2 of the summons.