

5.2 Deputy R.J. Renouf of St. Ouen of H.M. (Her Majesty) Attorney General regarding contracts of sale and purchase passed before the Royal Court: [1(516)]

When presenting a contract of sale and purchase to be passed before the Royal Court, is it permissible for an individual or private company to omit reference to the amount of consideration payable under the contract on the grounds of commercial sensitivity, in the same way as recent contracts passed by Andium Homes Limited for the purchase of properties adjacent to the Town Park?

Mr. M.H. Temple Q.C., H.M. Solicitor General (Rapporteur):

I am grateful to the Deputy of St. Ouen for this question. All contracts relating to Jersey land must be registered in the Public Registry of Contracts. This requirement was first laid down by an ordinance of the States in 1602 for the establishment of our land registry. The requirement was confirmed by the Code of 1771, which still requires the Judicial Greffier to record the details of all such contracts, including the price, the *prix d'argent*, payable under the contract in respect of the property concerned. It is not clear what the precise effect may be of an omission to record the price in a land transaction in the public registry and the Judicial Greffier is considering raising this matter with the Court for determination, but the requirement contained in the Code of 1771 remains in force.

5.2.1 The Deputy of St. Ouen:

Will the Attorney General or Solicitor General be taking or speaking, giving any advice to Andium Homes to correct and publicise the prices it has paid under these contracts?

The Solicitor General:

In relation to these contracts the Law Officers' Department did not act for Andium Homes. But as I have said, the Judicial Greffier intends to raise this matter with the Court for determination and as part of that process I anticipate writing to the firms concerned who advised Andium in relation to these contracts, and will draw their attention to this matter and seek an explanation for it.

5.2.2 Senator P.F.C. Ozouf:

Is the Solicitor General aware of any other contracts that have had the price consideration not disclosed in the contract that is passed before the Court?

The Solicitor General:

The ones that I am aware of all concern Andium Homes.

5.2.3 Deputy J.A.N. Le Fondré:

Just as a point of record, would the Solicitor General note that the consideration was disclosed to the Corporate Services Scrutiny Panel in a public forum yesterday.

The Solicitor General:

I am grateful for that.

5.2.4 Senator P.F.C. Ozouf:

Would the Solicitor General also explain why it seems that such a fundamental part of a contract, the purpose of contracts being passed before the Royal Court, is that they are public? Could he also, when explaining to the Judicial Greffier, when he returns back or replies to this question explain why the contract itself was accepted without the consideration being paid, because it just seems to me such an extraordinary element of a contract not being included in a public court?

The Solicitor General:

Yes, the purpose ... so the Code of 1771 is clear that the public registry is intended to be exactly that. It is meant to be available for inspection, details of contracts are available for inspection by members of the public and that does include the price. In relation to the second question that the Senator asked, could he just remind me of what that question was?

Senator P.F.C. Ozouf:

Why was the contract accepted in Court?

[10:00]

Is it invalid if it does not contain important elements that the Court requires? That is the purpose of it, the Court can say no.

The Solicitor General:

The practice, as I understand it, of the Judicial Greffier is that contracts ... there are many contracts obviously that are presented on a Friday afternoon and the practice of the Greffier is that they can only scrutinise the contents of those contracts when it comes to listing them for inclusion in the Registry, which takes place 2 or 3 days subsequently to the Friday on which they are passed. So that is the reason why this has not been picked up.

5.2.5 Deputy R.J. Rondel of St. Helier:

Is the Solicitor General aware that probably quite a significant number of contracts have been passing through Court over the past few months that have the private agreement sort of statement in without any numerical figure against them, whereas there never used to be?

The Solicitor General:

I am aware of 7 contracts and, as I said, those all concern Andium Homes. I am not aware of other contracts. There may well be other contracts but the only ones I am aware of are 7.

5.2.6 The Deputy of St. Ouen:

As it is the view of the learned Solicitor General that the contracts have breached the legal provision in the ordinance and the code, can he explain the nature of the Judicial Greffier's proposed reference to the Court? Is it for the Court to make a general ruling as to whether the omission of the consideration would be permissible in future or is the intention to seek directions as to how the contracts that have been passed by Andium Homes should be corrected?

The Solicitor General:

It may well be that a benefit of referring this matter to the Court is to raise this matter publicly and give directions to firms generally concerning this matter. One possible remedy that might be sought would be simply an order that revised contracts are passed which do contain the consideration or the price that is paid under the contracts. But we are only just starting to think about the form of the representation and the relief that we will be seeking, so this matter is at a very early stage.