

ROYAL COURT
(Samedi Division)

10th February, 1988

Before: V.A. Tomes, Esq., Deputy Bailiff
assisted by Jurats C.L. Gruchy and Mrs M.J. Le Ruez

H.M. Attorney General

-v-

Eveswell Properties Limited
Andrew James Nicholls and
Pauline Garbutt

Breach of Article 14(1)(d) of the Housing
(Jersey) Law, 1949

Advocate C.E. Whelan for the Crown
Advocate C.J. Dorey for the Defendants

JUDGMENT

DEPUTY BAILIFF: The Court does not share the views expressed by Miss Dorey. We have no hesitation in distinguishing this case from that of Mr and Mrs Luis. Mr and Mrs Luis did not purchase the property, whether through a company or otherwise, they merely rented the flat. But this Court has said on many occasions that persons who purchase property in Jersey have a special duty to make themselves aware of the laws that effect that ownership and to comply with them.

There is an added factor in the Luis case in that the estate agent was open to criticism and that was regarded as the strongest mitigating factor. I asked the specific question whether the present defendants received effective advice but it was not so claimed. We believe that the defendants knew what they were doing. They used the agreements not for the purpose of a genuine contraction but as a sham. The true relationship was that Mr Nicolls and Miss Garbutt had the legal occupation and sub-let a bedroom to Mr Kent. The Court's view is that the conclusions are fully justified. The defendants and indeed the Court must not overlook the fact that the States have indicated the seriousness of these offences by fixing the maximum penalty at £5,000. We have taken fully into account the mitigating factors, the co-operation and the admissions but we are satisfied that they are already reflected in the fines asked for by the prosecution. The points in the conclusions are granted and the company is fined the sum of £250; Mr Nicholls is fined the sum of £500, or in default of payment will serve three months imprisonment; Miss Garbutt is fined £500 or in default of payment she will serve three months imprisonment and all three defendants jointly and severally will pay the costs in the sum of £200.

Authority referred to in the judgment:

A.G. -v- J.M.P. Luis et Uxor - J.J. 15th January, 1988, as yet unreported.