

Interpretation of Restrictive Covenants Affecting Land Requiring Consent – Obsolete on death of the Original Covenantee?

A restrictive covenant affecting land is an agreement whereby one person (the covenantor) agrees in favour of another person (the covenantee) not to do certain specified activities in relation to, and for the benefit of, a specified piece of land.

Restrictive covenants may, for example, limit the use of land, prohibit particular trades or businesses, forbid undesirable activities or potential nuisances, or restrict the number or type of buildings that can be erected.

Since the introduction of the land registration system in the Isle of Man and the Land Registration Act 1982, to be binding against successive owners of registered land, a restrictive covenant which runs with the land must be registered as a burden against the relevant title at the Land Registry. Registration does not however necessarily mean that a burden will be enforceable - this will depend on the nature of the restrictive covenant and the facts of each case.

Over recent years, the Isle of Man Courts have been asked to interpret certain restrictive covenants which require consent before specified works are undertaken pursuant to section 1 of the Conveyancing Act 1982 (the “**Act**”).

In the case of *In re Christian 1993-95 MLR 218* the Court held that a restrictive covenant had not been expressly assigned by the original covenantee upon their sale of the property and the current owner of the benefitting land could not therefore benefit from the covenant. This covenant could only be enforced by the original covenantee or their personal representatives. As the original covenantee was assumed to be deceased, the Court determined that the restrictive covenants would not injure any person entitled to the benefit and as a result in that case the restrictive covenant was discharged under the Act.

Section 1 of the Act is identical in terms as section 84 of the Law of Property Act 1925 (an Act of Parliament) (the “**LPA**”) and case law from the English and Welsh Courts regarding section 84 of the LPA can therefore be persuasive (but not binding) to an Isle of Man Court on the question whether a restrictive covenant is obsolete and should be discharged under the Act.

In particular, in the recent English decision *Savage v 60 Kent Road (Maintenance) Ltd [2021] UKUT 102 (LC)* the Upper Tribunal of the Lands Chamber noted that there is a body of English case law which has held that where there is a restriction against alterations or building without approval and the person with the power of approval is no longer in existence, then such restriction automatically lapses. On the facts of this case the Tribunal held that the relevant restrictive covenant had become obsolete and discharged under section 84 of the LPA when the last of the three original covenantees had died. In coming to this decision the Tribunal considered the following facts:

- The relevant restriction was not absolute but allowed for certain works to be undertaken with prior approval of plans.
- The power of approval for the works in question was vested in the “Vendor’s Surveyor”.
- Other restrictions in the relevant schedule expressly included reference to the vendors and their successors in title or to the owners for the time being of specified land or any unsold part thereof, which references were not included in the restriction in question.



- As the relevant restriction did not include these references, which were expressly included in other provisions, the Tribunal held that the restriction must have been intended to be limited in time to the lifetime of the vendors.

This decision, which would be a persuasive source of guidance in Manx Courts, highlights the importance of the precise wording of restrictive covenants. When interpreting restrictive covenants included, or to be included, in an agreement, it is therefore considerably important to reflect on the document as a whole and to ensure that if the power of approval is passed down to another person or annexed to the ownership of land, or a part thereof, this is expressly stated in the agreement.

If you would like further information on this subject please contact Rachel Winterbach or Joshua Quinn.

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