

Plain English

The Message:

Language in legal documents must be understood in its own context.

The Case:

Rees v Peters [21 July 2011] concerned the commonly encountered dispute of whether a property owner could enforce the benefit of a restrictive covenant entered into many years ago against a neighbouring owner. As is often the case in such disputes, much turned on the very specific language used in the document. The case emphasises the obvious point of being as clear as possible in describing who or which land has the benefit of or is burdened by the restrictive covenant.

In 1957, Ms Freeman, the freehold owner of what became Farne House and Court Barn, sold Farne House to a predecessor of a party to the present dispute. The 1957 conveyance contained a covenant by "*the vendor with the purchasers and their successors in title for the benefit of the property hereby conveyed, or the part thereof for the time being remaining unsold and every part thereof*", not, without the purchasers' written consent, to use a meadow owned by the vendor for any other purpose than that of grass land or grazing, nor to build on that land without the purchasers' consent. The quoted words were crucial to the outcome of the case.

The covenant was properly registered as a land charge. In 2003, the Rees became registered owner of Farne House with the rights granted by the 1957 conveyance. In 1990, the property that Ms Freeman had retained (Court Barn) was sold to Mr Peters including the meadow. The transfer stated that the property was sold subject to the covenant in the 1957 conveyance, but when Peters was registered, the registered title for Court Barn did not refer to that covenant.

In 2009, the Rees brought proceedings seeking a declaration that the covenant was valid and binding on Peters and for an order rectifying Peters' title so as to note the burden of the covenant.

The High Court decided in Peters' favour. On the wording of the covenant, since the property which the Rees now owned had been sold off after the 1957 conveyance, the covenant was no longer enforceable and the Rees could not benefit from it. The Rees appealed to the Court of Appeal, which decided in their favour.

Construing the language of the covenant in the context of the 1957 conveyance and in the light of the surrounding circumstances then prevailing, the Court decided that the Rees still had the benefit of the covenant. An important factor was the explicit reference to "successors in title", which the Court interpreted to prevail over other potentially inconsistent language in the covenant

and to give the result that successors to the whole of Farne House could benefit from the covenant.

The Court considered that such construction accorded with the words used, but also produced a more sensible result. The Court also decided that Peters' title should be rectified to enable the covenant to be noted. This was based on the court's statutory power to order the register to be altered to correct a mistake. The Court rejected Peters' argument that the Rees were entitled to compensation so no injustice would be caused to them. Compensation was of little value to the Rees, who wanted the covenant enforced. Peters had throughout actual notice of the covenant and it would be unjust not to alter his registered title.

The case offers a good illustration of why, despite the usefulness of standard phraseology in conveyancing, the relevant document must still be read and understood as a unique text directed to a specific transaction with its own parties and purposes. Similar phrases used in other contexts in case authorities may bear different meanings.