

Re St James, Birdham

Judgment

1. This is, or at least ought to be, a straightforward petition. The petition is dated 10 July 2006 and is in the name of the rector and churchwardens of St James' Church, Birdham, a grade I listed building. Only one item appears in the Schedule of Works which reads 'to replace an existing pipe organ with a Wyvern B235 electronic organ'. However this petition has generated a considerable amount of additional paperwork and correspondence, certain of which has involved persons unconnected with the court.
2. There appear to have been two matters which have served to frustrate the timely and orderly presentation of this petition for determination. First, the parish has taken the irregular and unlawful step of entering into a contract for the disposal of the existing organ prior to there being any adjudication of this petition. Secondly, there seems to have been a significant misunderstanding as to the role and function of the Diocesan Advisory Committee and the status of remarks made by its members. I need to address each matter in turn.
3. The disposal of any part of the fabric of a church or of its ornaments and furnishings is unlawful in the absence of a faculty. In consequence it is both improper and unlawful for the parish to have entered into a contract for the sale of the organ. Their title is fettered by dint of the faculty jurisdiction and under the principle *nemo dat quod non habet* cannot pass to any putative purchaser. See *Re St Mary's, Barton-upon-Humber* [1987] Fam 41.
4. Bryan E Arthur wrote to the Archdeacon of Chichester on 16 October 2006, copying that letter to me and various others. Although the contractual documentation has not been disclosed to this court, that letter confirms what was implicit in the earlier paperwork, namely that 'the organ has now been sold and purchase money received from a German who buys and restores organs'. It would appear that a sale on e-bay such as this is legally binding once the article offered for sale has been accepted by a buyer. Whilst in principle there is nothing objectionable in a sale by e-bay, this should not take place before the requisite faculty has been obtained, and the court needs to be satisfied that the mode of sale is appropriate for the sacred nature of the item to be sold. Different considerations would apply, for example, in the case of a font or communion plate.
5. When the petition was first presented to this court, I required an explanation from the petitioners as to why they had got themselves into the position of having contracted to sell the existing organ even though their title to it was impaired and they had no lawful authority to conclude a contract. The incumbent wrote to me personally. His letter is dated 25 October 2006. Although it is somewhat light on contrition, the letter gives a very full recital of the factual background to the current situation. It speaks of frustration, upset and anger at what is described as a Kafkesque process. No useful purpose would be served in

repeating its content in this judgment. A rather more generous apology is offered by Mr Drew, one of the churchwardens, in his letter of 28 October 2006. I accept it unhesitatingly.

6. It would therefore appear that the reason for the parish entering into an irregular, presumptuous and unlawful contract was (i) ignorance of the legal position on title and (ii) its interpretation of the advice and conduct of members of the DAC. It was under the impression that it was acting in accordance with directions given by the chairman of the DAC and its advisers on organs. If it be the case that the DAC gave the parish the impression that it should secure the sale of the organ before any petition had been submitted, still less a faculty granted, then this is highly unfortunate. It is clearly prudent to investigate the marketability of an object which a parish may wish to dispose of, but to conclude a contract of sale prior to the grant of a faculty contravenes ecclesiastical law.
7. I do not wish to open up a detailed examination of the events of the last few months but, for the sake of future applications within the parish, I wish to make it abundantly clear that this situation should not be repeated. The function of the DAC is to advise and not to set out requirements with which a parish is to comply. It should not frame its advice in terms amounting to the granting or withholding of permission nor should it give the impression that if certain things are done then a faculty will follow. Equally a parish should not interpret favourable advice from the DAC as amounting to authorization, and should be astute to avoid usurping the function of this court.
8. I then turn to the merits of this application. It falls into two parts. First the removal of the existing organ and secondly the introduction of the Wyvern organ. The DAC issued a certificate of recommendation on 21 April 2006 subject to a number of provisos. It may be that the parish was misled by these provisos into thinking that these matters were conditions which had to be complied with before a petition could be lodged. The DAC also advised in this certificate that the parish should consult with the local planning authority and the Council for the Care of Churches. I can see no reason for consulting the LPA. Planning permission is not required as there is to be no structural alteration to the building nor is the exterior to be affected. These works are governed by the ecclesiastical exemption. It appears that the LPA has not replied in any event. However consultation with the CCC is a statutory requirement where removal of furniture and ornaments are concerned. See rule 15 of the Faculty Jurisdiction Rules 2000. The parish ought really to have consulted the CCC of their own volition at an earlier stage.
9. The advice of the CCC is contained in a letter from Dr David Knight. The CCC does not object to the sale of the organ, which it regards as inadequate. The CCC regards the proposal to introduce the Wyvern organ as acceptable. It regards it as a short term solution and expresses the hope that a pipe organ will be obtained at some future date.
10. The Statement of Needs makes out a case for the new organ with cogency and I regard it as highly compelling. It is a lucid and thoughtful document which has been very well prepared.

11. Indeed, I have little difficulty in granting this petition and in ordering that a faculty pass the seal. It should be noted I have dealt with this matter within a week of receipt of the papers following lodging of the letter from the CCC at the registry. The consistory court has processed the matter with its customary expedition, waiting only for the representations of the CCC as required under the FJR. If the parish had devoted the same level of energy to following court procedure as it has to circulating correspondence of complaint, the resolution might have been swifter. I propose to take no further action regarding the unlawful contract for the sale of the organ. The faculty will have retroactive effect. The additional costs involved in this matter must inevitably be borne by the parish. I trust that the role and function of the DAC and the status of its advice is now more clearly understood.

12. The faculty will be subject to the following conditions:
 - i. that arrangements be made for the dismantling of the organ at a time convenient to the parish and Mr Christian Goeb;
 - ii. that any damage to the interior of the church be made good to the satisfaction of the parish's inspecting architect and, in the event that such damage is other than merely cosmetic, the matter is referred to me;
 - iii. that the finish on the organ console matches that of the choir seats;
 - iv. that the removal of the existing organ and the installation of the Wyvern organ be completed within 12 months of the issue of this faculty;
 - v. that the work (both the dismantling of the existing organ and the installation of the Wyvern organ) be carried out under the direction of the parish's inspecting architect.

The Worshipful Mark Hill
Chancellor

20 November 2006