

If you've got it, flaunt it

Published 6 October 2017

Orientfield Holdings Limited v Bird & Bird LLP [2017] EWCA Civ 348

In the recent decision in *Orientfield Holdings Limited v Bird & Bird LLP [2017] EWCA Civ 348*, the Court of Appeal has reinforced the need for solicitors to exercise caution when determining whether information is material to a transaction, and the perils of not providing such information to one's client.

Background

The solicitors were instructed to act on the purchase of a substantial residential property in London. The property was being purchased for £25.75m.

The solicitors carried out the usual pre-contract investigations. However, one of the responses from the vendors in the Property Information Form caused concern. In reply to the question whether the vendors were aware of any nearby development proposals, there was a handwritten instruction that the solicitors should make its own enquiries. The solicitors were not happy with that response and, having failed to make progress with the vendors' solicitor, obtained a Plansearch report summarising all planning applications within a 300 metre radius.

The Plansearch report identified two major developments within 250 metres. However, there was no further investigation and the results were not communicated to the Claimant as part of the Report on Title. The Claimant gave instructions to proceed, and contracts were exchanged and a deposit of £2.575m paid.

Four months later, the client became aware of major development plans for a school site. The client elected to withdraw from the transaction due to the potential impact on the value of the property, asserting that the contract was rescinded having been misled by the vendors over the planning position. Proceedings between the vendors and the client followed and were settled shortly before trial with the client recouping 50% of the deposit and accumulated interest.

The Claim

The action against the solicitors was to recover the remaining 50% deposit plus incidental costs concerned with a planned refurbishment project. It was alleged that the solicitors were negligent in failing to take any action in relation to the Plansearch report. This was denied. The solicitors asserted that there was no duty to alert the client to anything within the report, or to have carried out any wider investigations. Further, it was contended that the client would have proceeded with the purchase in any event.

The court at first instance found in favour of the client and held that, whilst there was no duty to have obtained the report in the first place, upon receiving the report the solicitors were in breach in not having at least summarised the findings and invited instructions prior to exchange. Causation was also found to have been established. The client had not been given the opportunity to decide whether to proceed with, withdraw from, or further investigate the proposed purchase.

The appeal: The decision was appealed on three grounds, that: (i) the court had failed to make a finding as to what summary of the Plansearch report should allegedly have been given; (ii) any summary of the report would not have revealed the existence of the specific development that prompted the withdrawal; and (iii) the only realistic conclusion was that the client would not have acted any differently.

The Court of Appeal accepted that the original judgment could have been more methodical and explicit on the question of causation. Nevertheless, the overall conclusions of the Judge at first instance amounted to a positive finding that a proper summary of the report would have revealed the development, the potential impact to the Claimant, and have prompted further investigations. All three limbs of the appeal were accordingly rejected, with no reason to interfere with the original decision.

Commentary

The case highlights the perils to solicitors of trying to self-determine the relevance of information to their clients. The solicitors had gone further than strictly necessary in carefully evaluating the vendors' responses. However, once then in possession of the additional information, the solicitor should provide the client with such information. This would place the onus back upon the client to make a more informed decision on its available options; and help to prevent the solicitor from becoming exposed to a claim further down the line.

Authors



Catrin Davies

Newport

+ 44 (0)1633 657682

cadavies@dacbeachcroft.com



James Hazlett

Leeds

+44 (0)113 251 4733

jhazlett@dacbeachcroft.com


DAC BEACHCROFT