

High Court finds solicitors' firm jointly liable for third party's loss

In a landmark ruling, the High Court has found the solicitors acting for a fraudulent seller of a property and the buyer's conveyancer to be jointly liable for the buyer's loss of around £470,000.

This case highlights the fiduciary duties in relation to purchase monies which are owed by professional advisers on both sides of a conveyancing transaction. It also serves as a general reminder of the importance to solicitors and other professionals to apply a risk-based approach to client due diligence. Professional advisers must be vigilant to the risk of fraud throughout a transaction and are under an obligation to investigate suspicious indicators in transactions they are instructed on.

The case

The case of [*Purrusing v A'Court & Co \(a firm\) and another \[2016\] EWHC 789 \(Ch\)*](#) concerned the purported sale of a Wimbledon property by a Mr Dawson, who claimed to be, but was not, the registered proprietor of the property.

Mr Dawson's solicitors, A'Court & Co (ACC), and the buyer's conveyancers, House Owners Conveyancers Limited (HOC), both admitted liability for breach of trust. The breach of trust occurred when, despite there never having been a genuine completion in respect of the fraudulent transaction, HOC paid the purchase monies to ACC, and ACC paid them into a Dubai bank account on the instructions of their client, Mr Dawson. None of the purchase monies have been recovered.

The main issue before the Court was whether either ACC or HOC should be granted relief under section 61 of the Trustee Act 1925 (the Act). There was no question of ACC being on notice of dishonesty in this case and so, in order to be entitled to relief under section 61, ACC and HOC had to demonstrate that they had acted reasonably.

The decision

Case law has established that there is a high threshold for reasonableness for the purposes of relief under section 61 of the Act where a solicitor pays over purchase monies without completion taking place. However, none of the authorities concerned claims for relief by solicitors for the seller. ACC argued that a lesser standard of reasonableness should be applied to a seller's solicitor. The Court rejected ACC's argument, and held that the same standard of reasonableness applies: *"[t]he vendor's solicitor is as much a trustee of the purchase money while it is in his possession pending completion as is the purchaser's solicitor"*.

The Court found that both ACC and HOC failed to prove that they had acted reasonably in the circumstances and therefore neither was entitled to rely on section 61 of the Act.

The Court found that ACC had failed to comply with its anti-money laundering obligations and failed to adopt a risk-based approach to the transaction. In particular, ACC failed to consider whether Mr Dawson was actually the owner of the property. There were a number of factors known to ACC which pointed toward the need to undertake more extensive client due diligence in order to assess whether the transaction was in fact lawful. Amongst the

crucial factors was the fact that the address on Mr Dawson's identity documentation did not match either the address of the property he wished to sell or the alternative address for service which appeared on the Land Registry official copy entry. Strikingly, Mr Dawson had also not provided any documentation linking him to the property. Despite this, ACC had not requested an explanation from Mr Dawson as to the inconsistency in the addresses or asked for any material to link him to the property.

Certain features also made the property vulnerable to fraud, namely that it was unoccupied, of relatively high value, and there was no mortgage. Other relevant factors included the fact that Mr Dawson pressed for a speedy completion, that information provided by him in property information forms regarding building works and information revealed through a Local Authority search was contradictory, and that a previous sale had fallen through because Mr Dawson had refused to provide details of his employer to the proposed buyer.

The Court concluded that ACC bore significant responsibility for the loss as a result of its failure to carry out risk-based due diligence, which had increased the risk of loss by fraud. ACC was held to be equally liable for the loss to the buyer.

In addition to breach of trust, which was admitted, the Court found that HOC was also in breach of contract and duty as it had failed to advise its client of the unsatisfactory response to an additional enquiry.

The purpose of the additional enquiry in question was to ensure that the seller was the owner of the property and therefore entitled to sell it. The Court found that HOC could not have been reasonably satisfied with the answer provided by ACC.

In failing to advise its client of the unsatisfactory answer, HOC had failed to provide its client with the information necessary for him to make an informed decision as to whether to proceed with the transaction. The Court found that it was "close to inconceivable" that the claimant would have proceeded with the transaction had he been made aware of the risk by HOC.

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