

Dispute Resolution
Case Law Update
Rosling King LLP



The Chancery Division recently held that a solicitor was negligent for failing to attach a correct plan to a transfer of part and for failing to accurately calculate the amount of SDLT payable.

The Facts

In or around late 2006, the Claimant instructed the Defendant to act on its behalf in the purchase of land at 60-64 Toller Lane. It was also submitted by the Claimant that, at the same time, the Defendant was instructed to act on behalf of Mr Narwar Khan in the sub-sale of part of that land at 60 Toller Lane.

It was alleged by the Claimant that, due to the Defendant's failure to attach the correct plan to the transfer of part in respect of 60 Toller Lane, part of the Claimant's retained land was inaccessible and, as a result, there was a diminution in value. The Claimant also alleged that the Defendant failed to advise of the potential problems with the terms of the sale of part and failed to correctly advise on the amount of SDLT payable. The Claimant argued that, had it been fully advised, it would have instructed the Defendant to ensure that the sub-sale did not include any land that limited the way the Claimant intended to use the retained land.

The Defendant denied liability and argued that it had attached the correct plan, correctly advised the Claimant with regards to the possible problems with the transfer, but was instructed to proceed nevertheless. In any event, the Defendant argued that its retainer did not extend as far as the Claimant asserted.

The Decision

The Court held that the starting point in every case was to consider the parameters of the solicitor's retainer. The Court held that, because the Defendant argued that he gave the advice the Claimant contended should have been given, then it was implicit that the Defendant accepted the terms of the retainer. However, even if this was not correct, the Court held that, in accordance with *Credit Lyonnais SA v Rusell Jones and Walker* [2011] EWHC (Ch) 1310, it was implicit that a solicitor would give advice which is reasonably incidental to the work being carried out. Accordingly, the Court held that the retainer of a solicitor acting on a conveyancing transaction extends to giving advice on matters concerning title, or matters which might limit the reasonably foreseeable use or enjoyment of the property.

In respect of the claim for failing to correctly advise on the amount of SDLT payable, the Court held that the effect of s.45 Finance Act 2003 is that, where completion or substantial performance of a sale and sub-sale completes together, then the purchaser is only responsible for SDLT on the consideration paid for the whole site less the proportion attributable to the sub-sale. This should have been reported to the Claimant.

The Court confirmed that it was for the Claimant to prove its case on the balance of probabilities. In deciding whether this had been done, the Court referred to the inherent probability test. Referring to the judgment of Lord Hoffman in *Re B (Children)* 2008 UKHL 35, the Court stated:

"There is only one rule of law, namely that the occurrence of the fact in issue must be proved

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to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities.”

Satisfied that it passed this threshold, the Court gave judgment for the Claimant in the sum of £229,970.

Commentary

This case is another reminder of the scope of a solicitor’s duties. Although this cases enforces the principle that the starting point in assessing any breach of duty is the solicitor’s retainer, it is also confirmation that a solicitor should give advice which is reasonably incidental to the work being carried out and will be held negligent for failing to do so.

For further information, please contact [Georgina Squire](#) or the Partner with whom you usually deal.