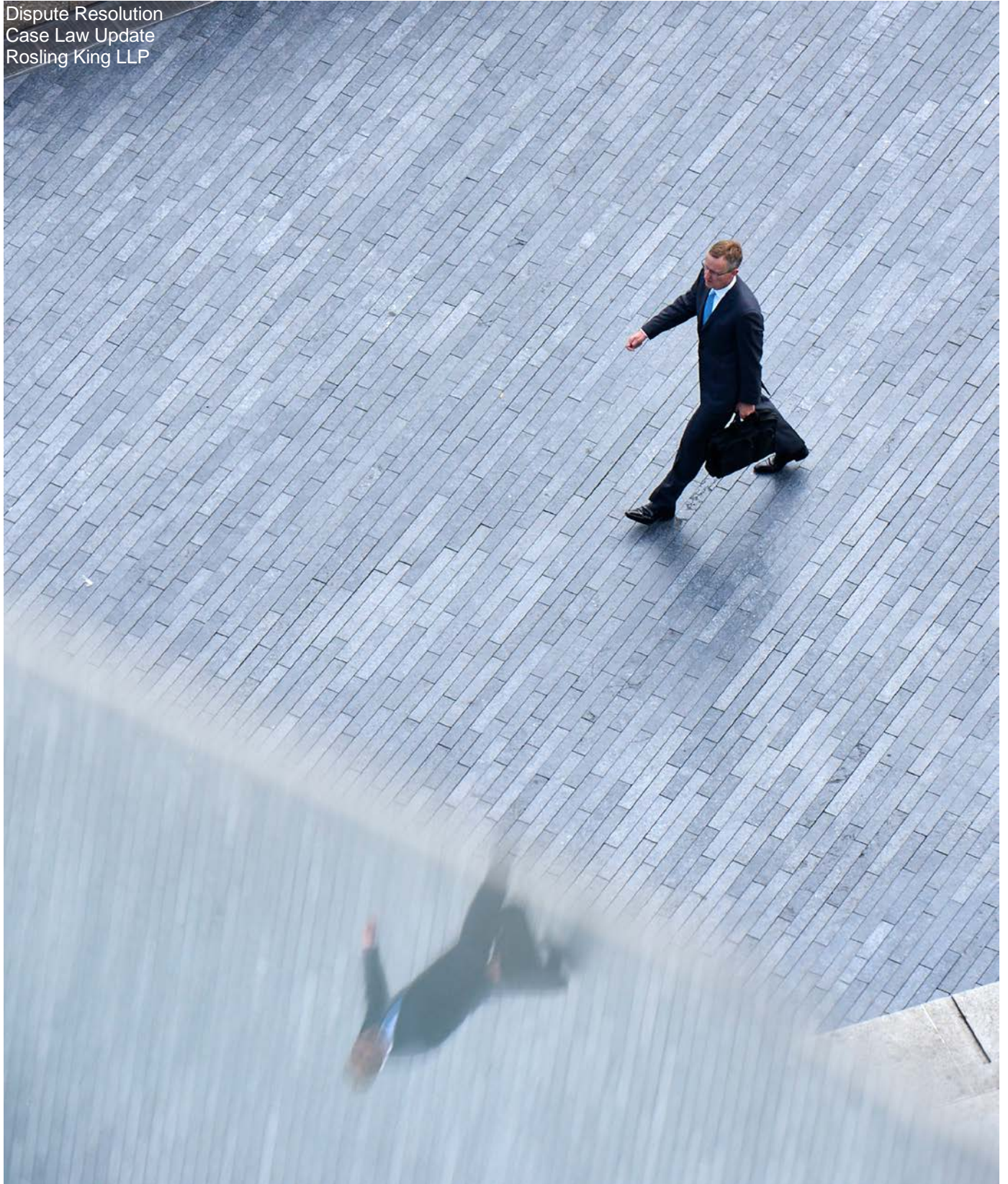


Dispute Resolution
Case Law Update
Rosling King LLP



The High Court has ruled on a claim in negligence against former solicitors acting in a property transaction dating back to 2010. The defendant had failed to advise the claimant as to the proposed development of a school within the vicinity of the target property.

The Facts

The defendant was instructed to act on the purchase of a residential property for investment purposes in London. Prior to exchange of contracts, the defendant undertook various searches in relation to the target property, one of which was a planning search. The report into the planning search identified planning permission for a large, non-residential build. Despite this, no further work was undertaken by the defendant to fully understand the extent of the proposed work. In addition, the findings of the report were never communicated to the claimant in the defendant's report on title ("ROT") which stated that nothing adverse had been revealed in the pre-contract enquiries.

The claimant subsequently paid the deposit of £2.575m and contracts were exchanged. Prior to completion, the claimant discovered that a school was to be built in the vicinity. This had been the large, non-residential development to which the planning search had referred. Upon learning this, the claimant sought to rescind the contract and recoup its deposit. Litigation ensued with the sellers over the deposit amount. The claim was settled prior to trial when it was agreed that the parties would split the deposit between them. Following this, the claimant issued a claim in negligence against the defendant seeking recovery of the balance of the deposit along with its legal costs for both the prior litigation and the aborted transaction itself.

The claimant argued that the defendant had been under an obligation to establish the full extent of the development and communicate this to them. Had they been made aware, then the transaction would never have been entered into and no deposit paid. The defendant denied this and claimed that no duty extended to informing the claimant of the development. The defendant further argued that, in any event, the losses of the claimant were not caused by the alleged breach.

The Decision

The High Court upheld the claimant's claim, finding that the defendant had in fact breached the duties it owed to the claimant.

The defendant took the decision to undertake the planning search. It was held that, having carried out such a search, the defendant was then under a duty to explain the results of this fully to the claimant. Upon the discovery of the proposed development, no further enquiries were made as to the nature of this. The Court held that the ROT should have, at the very least, identified the result of the planning search and requested further instructions to investigate. It was therefore a clear breach of duty to state in the ROT that the searches had revealed nothing which adversely affected the target property. The Court held that the duty to communicate matters actually known to a solicitor is to communicate information which may be material.

The Court held that there was no reason to indicate that the claimant would not have

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withdrawn from the transaction had it been informed of the planning. There was also no evidence of any other reason as to why the claimant sought to rescind the transaction. The defendant should have given the claimant the opportunity to assess the full nature of the development and thus consider its investment. Failure to do this was not to the standard of a reasonably competent solicitor.

Commentary

The case once again highlights the extent of a solicitor's duties when reporting to their clients. Should a solicitor acquire information that may be of importance to a client or may be material, they are under a duty to bring this to their client's attention. This is regardless of whether the investigations leading to the discovery were requested by the client or not.

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