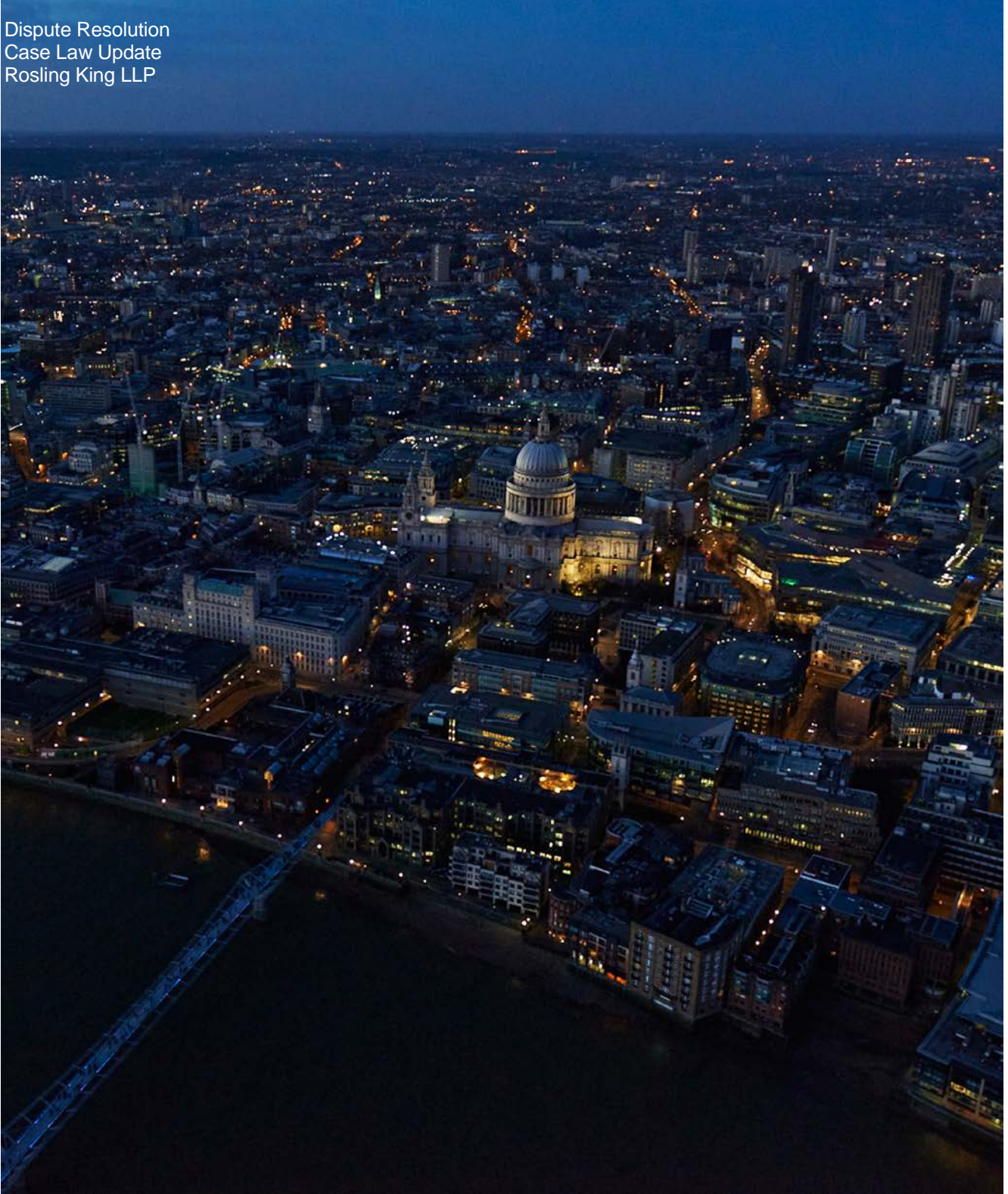


Dispute Resolution
Case Law Update
Rosling King LLP



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This case related to the fraudulent sale of a property, where a fraudster falsely alleged to be the registered proprietor of the property. By the time the fraud was discovered, the Claimant had paid over the entirety of the purchase price, circa £470,000. The money was transferred from the Claimant's solicitors to the fraudster's solicitors and then on to a bank account in Dubai. The money was never recovered.

The Claim

The Claimant brought an action for breach of contract and duty as well as for breach of trust against its solicitors ("HOC"). It also alleged breach of trust by the fraudster's solicitors, A'Court & Co ("ACC"). Following Judgment against ACC, HOC was joined as a Defendant. The issues for the Court to consider were:

1. Whether the Defendants should be granted relief for breach of trust under s.61 Trustee Act 1925. That being they had acted fairly and reasonably and ought to be excused for the breach;
2. Whether HOC was liable for breach of contract or negligence; and
3. The contribution each Defendant should make, if applicable, for the loss suffered by the Claimant.

During the course of the retainer, ACC acquired information as to the property which conflicted with that given to them by their client, the fraudster. Had ACC attempted to make contact with the fraudster at the property or registered address for service, then the fraud would have been discovered. In addition, an initial sale of the property fell through when the conveyancers in that transaction enquired about further details as to the vendor. Papers were then withdrawn by the fraudster for what, on the face of things, appeared no good reason. It was argued that ACC should have taken further action at this stage to investigate these inconsistencies and to properly verify that the transaction was a lawful one and the fraudster was who he claimed to be.

When the Claimant instructed HOC and the transaction was underway, HOC approached ACC to confirm that they were familiar with the seller, that they would verify that the seller was who they purported to be and that they would check his identity. The answers received were ambiguous. On receipt of these, HOC should have sought further clarification or at least reported this to their client so a decision could be made about the risks. None of these were done. ACC also intimated that they held no further documents in relation to the property and it should have been reasonable to contend that ACC had nothing linking the fraudster to the property. Again, this should have been relayed to the Claimant.

The Decision

The Court ruled in favour of the Claimant and held that both Defendants were guilty of breach of trust and that HOC was also in breach of contract and negligent.

In relation to the breach of trust, the Court looked first at whether the parties had acted reasonably and fairly and then asked whether, given the situation faced, they ought fairly to be relieved under s.61. It was held that both parties failed to fully consider the position in

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relation to the identity of the fraudster and deviated from best practice under the Law Society Conveyancing Handbook and Money Laundering Regulations. With specific reference to ACC, the Court held that, while in possession of the purchase money, they were as much a trustee to the Claimant as was their own solicitor. As such, each was a trustee and each acted in breach of this trust given that they forwarded completion monies to the fraudster without having acted reasonably to verify his identity or that the transaction was a lawful one.

The Claimant's case against HOC for breach of contract was based on the fact that HOC had failed to properly advise as to the inadequate responses given by ACC and the inherent risks of proceeding in light of this. The Court felt that, had the Claimant been properly informed, then it would have been inconceivable that they would have proceeded with the transaction. HOC argued that it was not standard practice to raise these enquiries or make further enquiries on the back of the responses provided. The Court felt this was beside the point. Where a solicitor came upon information that was, or could reasonably be, of interest to its client, it had a duty to bring that information to its client's attention. HOC had failed to do so and, as such, was in breach of its duties which it owed to the Claimant.

As to the division of liability, the Court found that based on the principles of equal trusteeship it was just that the Defendants bear equal liability for the Claimant's loss.

Conclusion

This case highlights the importance for solicitors to fully appreciate the transaction in which they are acting and the steps they are required to take in both checking the identity of their clients and investigating the lawfulness of transactions. It is a poignant reminder of the duties owed by a solicitor, not only their client, but to both sides of a transaction when acting as trustees. It also highlights the well-established principle that a solicitor has a duty to consider, report and advise on any information that is or could be of importance to their client.

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