

Dispute Resolution
Case Law Update
Rosling King LLP



October 2016
Page 2

In the case of *P & P Property Ltd v Owen White & Catlin LLP and another*, the High Court recently considered a claim arising out of P & P Property Ltd (“P&P”), a property investment company, and their purported purchase of 52 Brackenbury Road, London W6 (the “Property”) from a fraudster. P&P subsequently issued a claim against the seller’s solicitors, Owen White & Catlin LLP (“Owen White”) for breach of warranty of authority, negligence, breach of trust, and breach of undertaking. They also claimed breach of warranty of authority and negligence against the estate agents who marketed the Property, Crownvent Limited, trading as Winkworth (“Winkworth”).

The Facts

In November 2013, Owen White was approached by a man (the “Fraudster”) purporting to be the registered owner of the Property, Mr Clifford Harper. The Fraudster provided Owen White with a passport and a utility bill as proof of identity and address. The Fraudster later provided bank statements. Upon Owen White undertaking anti-money laundering checks, warnings were flagged in relation to the verification of Mr Harper’s identity. However, Owen White accepted the Fraudster as a client.

On or around 3 December 2013, the Fraudster approached Winkworth and instructed them to market the Property, stipulating that the sale must complete by 15 December 2013 as he required the funds to purchase a property in Dubai. In light of the urgency, Winkworth began to market the Property and accept offers that very day. This was before any anti-money laundering checks were completed by them. Winkworth subsequently alleged that they had requested evidence of the checks carried out by Owen White in order to satisfy their own requirements. However, this version of events was disputed by Owen White who had no record of such a request being made.

As the Fraudster was allegedly residing in Dubai at the time of completion, Owen White requested that the sale contract and transfer document be witnessed by solicitors in Dubai. The Fraudster purportedly complied and returned the documents which had been witnessed by a Mr Lazarus, of Winterhill Largo. Owen White failed to make any enquiries of Mr Lazarus, or Winterhill Largo.

In December 2013, the sale of the Property from the Fraudster to P&P completed. It became apparent, shortly after completion, that the Fraudster was not in fact the true owner of the Property and was instead impersonating the real Mr Harper. The Fraudster subsequently disappeared with the completion monies.

P&P brought a claim against Owen White, as the seller’s (i.e. the Fraudster’s) solicitors, for breach of warranty of authority, breach of duty of care, breach of trust, and breach of undertaking. They also claimed for breach of warranty of authority and negligence against Winkworth.

The Judgment

Mr Robin Dicker QC sitting as a Deputy High Court Judge (the “Judge”) considered the following in turn:

Breach of warranty of authority

P&P alleged that Owen White and Winkworth, through their conduct, had warranted and represented that they held the authority to act on behalf of the true owner of the Property. P&P argued they had relied on this warranty when purchasing the Property.

Given that the issue in this case was not whether authority had been given, but rather the identity of the person giving said authority, when making his decision the Judge ruled that the Court should “*not imply a warranty of authority which has an effect going beyond the basic representation*”. The Judge ruled that this cause of action failed, as though Owen White and Winkworth had represented that they held the authority of a Mr Harper, their client, they did not expressly warrant, nor could they be expected to impliedly warrant, by completing anti-money laundering checks, that this was the authority of the Mr Harper, the true owner of the Property.

Negligence

P&P argued that, by failing to ascertain the true identity of the Fraudster, Owen White and Winkworth failed to act with the skill, care and diligence expected of a reasonably competent solicitor and estate agent, respectively.

The Judge held that it was P&P’s solicitors, Peter Brown & Co, not Owen White, who owed a duty of care to P&P. The Judge ruled that Owen White acted on the instructions of their client, not P&P. Therefore, Owen White did not owe a duty of care to P&P and there were no special circumstances to indicate otherwise. With regards to the purported duty of care owed by Winkworth, whilst the Judge accepted that P&P had expected Winkworth to carry out their anti-money laundering checks and relied upon them to do so, he held that Winkworth did not owe a duty of care either, as “*reliance on its own is not sufficient to establish a duty of care*”. The Judge further commented that the general provision of advice “*cannot be construed as... an assumption of responsibility*” and there was nothing to suggest Winkworth had assumed responsibility to check the identity.

Breach of trust and breach of undertaking

P&P claimed that by holding completion funds received on behalf of P&P, Owen White was holding the funds on trust for P&P and that the completion money was paid out to the Fraudster in breach of trust. P&P further claimed that Owen White had given an undertaking that the completion money would be paid to the true owner of the Property and by paying the money to the Fraudster they had breached that undertaking.

The Judge found that as this particular transaction was governed by the 2011 edition of the SRA Code of Conduct, a breach of trust had not occurred. This was because the 2011 Code of Conduct could not be interpreted in such a way so that solicitors would be required to give a guarantee of title. The Judge further ruled that there was not a breach of undertaking, as the 2011 Code of Conduct did not cover undertakings relating to the identity of a seller and as such was unenforceable.

October 2016
Page 4

It should be noted that the Judge granted permission to appeal.

Commentary

This case highlights the risks involved when carrying out anti-money laundering checks and the importance of ensuring checks are completed correctly. Nevertheless, the Judge did recognise that “*the checks that solicitors are required to undertake are designed to reduce the risk of fraud and cannot reasonably be thought to eliminate it*” and that “*such checks can never be expected to be infallible*”.

Whilst this decision would appear to limit the extent of solicitor liability in situations of fraud in such transactions, solicitors should undertake further enquiries with regards to the seller’s right to sell the property they purport to own. Where necessary, solicitors should seek express warranties in order to not only protect themselves, but to protect the parties involved in the transaction.

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