

Dispute Resolution
Case Law Update
Rosling King LLP



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The Facts

In September 2014, Dreamvar (UK) Limited (“Dreamvar”) attempted to purchase a property from someone impersonating Mr Haeems for £1.1m (the “Purchase Price”). Dreamvar appointed Mishcon de Reya (“MdR”) as its representatives, whilst the seller appointed Mary Monson Solicitors (“MMS”). MdR transferred the Purchase Price to MMS in exchange for a transfer document and the registration formalities commenced.

Upon application to the Land Registry it was discovered that the seller was an imposter purporting to be Mr Haeems, the registered owner of the property. Contact was made with the “real” Mr Haeems, who disclaimed all knowledge of the transaction. By that time the fraudster had fled and neither he, nor the money paid, could be found. As a result, Dreamvar suffered a loss and sought financial redress from both MdR and MMS.

The Claim

Dreamvar’s case asserted various causes of action against MdR and MMS, namely that:

1. MdR was negligent in failing to advise as to the risk of identity fraud, given the unusual features in the transaction, such as the fact that the property was empty and the speed required;
2. MdR was negligent in failing to obtain an undertaking from MMS that it had taken reasonable steps to ascertain the seller’s identity;
3. MdR was in breach of trust in paying the completion monies to MMS who were not representatives of the “real” Mr Haeems;
4. MMS was in breach of trust in paying the completion monies to someone other than the “real” Mr Haeems, as it held the money on trust for Dreamvar;
5. MMS was in breach of warranty of authority to the effect that MMS was acting on behalf of the “real” Mr Haeems; and
6. MMS warranted that it had the authority of the registered owner of the property and that it had exercised reasonable care and skill in establishing its client’s identity as the registered owner.

The Court accepted that there was nothing unusual in the transaction which should have put MdR on enquiry about the risk of fraud. In addition, MdR was entitled to assume that MMS had made standard due diligence enquiries of its client and to have proceeded on this basis.

The Court disagreed with Dreamvar’s allegation that MdR was negligent in failing to obtain an

undertaking from MMS that it had taken reasonable steps to ascertain seller's identity. It was established that such obligation does not arise under the industry standards.

The Court decided that MdR held the money, paid into its client account by Dreamvar, on trust for Dreamvar for the purpose of completing the transaction. In these circumstances the Court held that completion meant that Dreamvar would exchange the Purchase Price for a real transfer document.

As completion of the transaction did not take place due to the fraud, MdR was found liable for breach of trust in paying the Purchase Price to MMS and was ordered to pay Dreamvar £1,080,200 plus interest, this sum represented the Purchase Price, less estate agent's commission of £19,800 (which was previously returned to Dreamvar).

MdR applied for relief from liability in respect of the breach of trust. However, whilst the Court held MdR had acted reasonably, the application was refused due to the comparative financial consequences for Dreamvar and MdR. Dreamvar was put in a dire financial position as a result of the fraud, whereas the balance sheet of MdR was far healthier and MdR had indemnity insurance under which a claim could be made.

The Court held that MMS was not in breach of trust, as it was not Dreamvar's agent. Accordingly, MMS was entitled to release the money to the fraudster even if the transfer document provided by the fraudster was not genuine and, as a result, no genuine completion took place.

In addition, it was held that MMS was not in breach of an undertaking to receive purchase monies on behalf of the real Mr Haeems. The Court accepted that paragraph 7(i) of the Law Society Code for Completion by Post (2011 edition) ("The seller's solicitor undertakes: (i) to have the seller's authority to receive the purchase money on completion") was not sufficiently clear to impose on MMS an obligation to have the authority of the true registered owner of the property to receive the purchase money on completion.

The Court held that it did not need to decide on whether MMS had warranted that it had the authority of the true registered owner as it had already decided that there was no such obligation on MMS to have the authority of the true registered owner. Further, the Court held that for a claim of breach of warranty to succeed the recipient of a warranty must know they are receiving a warranty and it must be relied upon. As MdR's evidence was that it would not have expected any such warranty to have been given by MMS and even if it had, such warranty would have been caveated to such an extent to have been essentially worthless, then it was not necessary for the Court to consider this point further.

Commentary

The judgment puts purchasers' solicitors in a disadvantageous position, as they might be found to be in breach of trust even where they comply with ordinary conveyancing standards. This may also have major implications for the professional indemnity market. MdR have already been granted leave to appeal and the Law Society is said to be considering whether



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to intervene in any appeal.

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