

Dispute Resolution  
Case Law Update  
Rosling King LLP



### The Facts

Orientfield Holdings Limited (“**Orientfield**”) is a special purpose vehicle established for the purpose of purchasing and holding property. Orientfield was considering the purchase of a property at 56 Avenue Road, London (the “**Property**”). Bird & Bird LLP (“**B&B**”) acted for Orientfield in relation to the purchase of the Property. In October 2010, Orientfield’s offer to purchase the Property for £25.75 million was accepted. The sellers returned a completed Property Information Form to B&B. Following discussions between B&B and the sellers’ solicitor, B&B suggested that a Plansearch report should be carried out to reveal planning applications which might affect the Property.

A Plansearch Plus Report (the “**Plansearch Report**”) was obtained, which revealed 251 planning applications within 300m of the Property. One of which was a large planning application at 80 Avenue Road. It was common ground that a search of the local authority records, using the planning references supplied in the Plansearch Plus Report, would have revealed the full details of the major development of two existing schools (the “**Development**”). B&B reported to Orientfield but did not mention the Plansearch Report or the Development. In relation to “pre-contract inquiries”, B&B simply stated: “The information provided by the sellers in their replies to our pre-contract inquiries did not reveal anything that adversely affects the property.”

Orientfield and the sellers exchanged contracts, and a deposit of £2.575 million was paid. Shortly before completion, Orientfield learnt of the Development and withdrew from the transaction. The sellers issued proceedings against Orientfield seeking to forfeit the deposit paid. This claim was settled with Orientfield recovering half of the deposit and half of the interest which had accrued.

Orientfield subsequently brought a claim for negligence against B&B in relation to their failure to bring the results of the Plansearch Report to its attention. Orientfield sought to recover the remaining half of the deposit and interest it had been unable to recover, together with its costs of dealing with the claim by the seller and the costs Orientfield had incurred, post exchange, in respect of refurbishment work planned for the Property.

### High Court decision

The High Court found in Orientfield’s favour and B&B appealed.

### Grounds of Appeal

B&B appealed on the grounds that:

- (i) despite finding that B&B ought to have provided Orientfield with a summary of the results of the Plansearch Report, the judge erred in failing to make a finding as to what the terms of a summary of the Plansearch Report should have been;

- (ii) the judge erred in finding that a summary of the Plansearch Report would have revealed the existence of the Development to Orientfield; and
- (iii) if the judge had made a finding as to precisely what B&B should have told Orientfield in the summary, and given that the Development would not have been revealed, the only proper conclusion should have been that Orientfield would not have done anything differently. Orientfield would not have pulled out of the purchase and the losses would have been suffered in any event.

### Decision

The Court of Appeal held that it was clear from a proper analysis of the High Court judgment in the context of the pleadings, the evidence, and the way in which the arguments were presented at trial, that the judge did indeed reach positive findings to the effect that; a proper summary would have highlighted the Development and explained its potential significance (i.e. it would not merely have repeated basic information from the Plansearch Report); Orientfield would have then instructed B&B to look into the Development; and thus, the details of the Development would have emerged.

The Court of Appeal held that, whilst there was some force to B&B's submission that the High Court ought to have worked through the issue of causation more methodically and explicitly, and expressly stated what information should have been provided to Orientfield and what Orientfield would have done and what would have happened, there was no basis for the Court of Appeal to upset the High Court's conclusion, as the judge had heard all the evidence at trial.

Against that background, the fact that the judge in the High Court did not himself formulate precisely the terms in which a non-negligent solicitor should have formulated the summary goes nowhere. The judge clearly and sufficiently considered what an appropriate summary of the Plansearch Report would have revealed and his conclusion could not be faulted. It followed that B&B's grounds of appeal failed and the appeal would be dismissed.

### Comment

The decision is an encouraging one for claimants which, following the Supreme Court decision in *BPE Solicitors v Hughes-Holland*, reaffirms the Bowerman duty and confirms that the threshold of information to be communicated to the client by a solicitor is "intentionally low" in claims of this type. As is often the case, each claim is likely to be decided on its own facts.

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