

Real Estate:
Case Law Update
Rosling King LLP



The Facts

The Sellers, Mr and Mrs Conway, accepted an offer (made via an agent, Mr Obahor) for the purchase of 86 Uphill Road, London, NW7 4QE (the “**Property**”) at a price of £5m (the “**Purchase Price**”). Mr Obahor negotiated the terms of sale and introduced the Property to the Buyer, Prince Eze. Mr Obahor received a payment of £150,000 from the Buyer and the promise of a payment of £75,000 from the Sellers (the “**Disputed Payment Agreement**”). Contracts were exchanged in relation to the purchase of the Property (the “**Contract**”). The Sellers then proceeded to exchange contracts in relation to the purchase of another property (the “**New Property**”). The Sellers required simultaneous completion for both transactions, because they were intending to use the proceeds of sale of the Property to pay the purchase price of the New Property. The Buyer decided not to proceed with the purchase and failed to comply with a notice to complete.

The Sellers claimed damages for breach of contract, claiming substantial losses which included (i) the difference between the Purchase Price and the price achieved on a subsequent sale of the Property to another buyer of £4.2m and the need to market and sell the Property again; (ii) costs incurred by the Sellers in respect of bridging finance to enable them to proceed with their purchase of the New Property; and (iii) miscellaneous losses. The Buyer stated that the contract was concluded following the Seller’s promise to pay a bribe or secret commission to his agent. That rendered the contract void or at least voidable and unenforceable by them. The Buyer counterclaimed for a declaration to that effect and the repayment of his deposit. In the alternative, the Buyer contended that if the contract was enforceable by the Sellers, the Buyer did not agree with the amount of damages claimed.

Issues

Issues arose as to: (i) what the nature of the relationship between the Buyer and Mr Obahor was. In particular, was that relationship such as to engage the law relating to bribes or secret commissions; (ii) did the Disputed Payment Agreement amount to the promise of payment of a bribe or secret commission to Mr Obahor; (iii) if it did amount to the promise of a bribe or secret commission, what were the consequences; and (iv) if the claimants were entitled to damages for breach of contract, what was the quantum of damages.

Decision

The Judge allowed the Sellers’ claim in part holding that in relation to issues (i) to (iii), the relationship between the Buyer and Mr Obahor was not such as to engage the law on bribes. Therefore, issues (ii) and (iii) did not arise here. In relation to issue (iv), the Judge held that the contract between the parties was valid and enforceable, the Buyer was not entitled to avoid the contract but was in breach of contract and the Sellers were entitled to damages for breach of contract, though not to the full extent of their claim.

As to the first head of loss, the Judge confirmed, amongst other things, that the Sellers were entitled to: (a) the difference between the sale price agreed with the Buyer and the price that

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was and ought to have been agreed on the re-sale (£4.2m); (b) additional legal fees incurred in respect of the purchase of the New Property; (c) fees paid to Knight Frank LLP in respect of the re-sale; (d) legal fees in respect of the re-sale; (e) a portion of holding costs for the Property; (f) the cost to insure the Property. As to the second head of loss, the Judge held that the Sellers were entitled in principle to recover damages in respect of the cost of bridging finance. As to the third head of loss, the Sellers were entitled to interest paid to the sellers of the New Property and fees paid to a removal company in respect of the abortive move from the Property to the New Property.

Commentary

This case is good reminder that a failure to complete, following exchange of contracts, can have significant financial consequences.

If you would like to discuss this case, or commercial matters in general, then please do not hesitate to contact [Ann Ebberson](#) of this firm who would be happy to assist.