

Dispute Resolution
Case Law Update
Rosling King LLP



Introduction

We previously reported on the first instance decisions of these two claims, Dreamvar (UK) Limited v Mishcon de Reya [\[here\]](#) and P&P Property Ltd v Owen White & Catlin LLP [\[here\]](#).

The Court of Appeal's Judgment, handed down on 15 May 2018, in these cases means that both the seller's solicitor and the buyer's solicitor will automatically be in breach of trust, if property sale funds are paid to a sham seller, even if neither firm has been negligent.

Background

In summary, in both claims, a property developer proceeded with the purchase of a property. However, the seller was not the true owner of the property. The sham seller instructed solicitors and as did the bona fide buyer. On completion the purchase money was transferred from the buyer's solicitors to the seller's solicitors and then on to the sham seller, who made off with the proceeds of sale which could not be recovered. This left the buyer out of pocket, and with nothing to show for it.

Dreamvar sued their own solicitors, Mishcon de Reya ("**Mischon**"), and also the seller's solicitors, Mary Monson Solicitors ("**MMS**"), whereas P&P only sued the seller's solicitors, Owen White & Catlin LLP ("**OWC**"). Both claimants alleged negligence, breach of warranty of authority, breach of undertaking, and breach of trust.

At Trial, the case failed against MMS and OWC. MMS and OWC contended that the Law Society Code for Completion by Post provided them with the necessary authority to hold and release the money to their client, the sham seller, free of any liability to the buyer.

However, despite doing no wrong, Mishcon were found liable for the loss and ordered to pay £1m damages to Dreamvar.

The Appeal

The Court of Appeal was in essence being asked to reach a difficult decision namely, who out of the apparent innocent parties should bear the loss?

The Court of Appeal, like the judge at first instance, held that Mishcon had not been negligent in their conduct of the purchase of the property. However, Mishcon was found liable for breach of trust, as they parted with the purchase funds in circumstances where there was no genuine sale. The Court of Appeal found that Mishcon was in a better position to cover the loss than Dreamvar because they had insurance that would cover such loss.

The appeal in Dreamvar was only partially upheld. The Court of Appeal overturned the findings in relation to MMS and held that a seller's solicitor does warrant that they act on behalf of the genuine owner of the property. As such, Mishcon succeeded in their claim for contribution against MMS. OWC were also held liable for their fraudulent client and ordered to

repay the funds the P&P had paid.

Commentary

Given the impact of the decision it is likely that the Judgment could be appealed to the Supreme Court. In the meantime, the Judgment means that those acting on conveyancing transactions must be far more diligent about the checks they undertake to satisfy themselves as to the identity of their client.

At this time there is little guidance on how solicitors can avoid liability. It is hoped that the Law Society and/or the Council for Licenced Conveyancers will provide some guidance to practitioners over the coming months.

The decision will also likely impact premiums for professional indemnity policies, or may lead to firms needing to purchase another form of policy to cover such eventualities.

As this is still a recent decision, we will have to wait and see the full impact.

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