



Conveyancing liability

May 2017

The perils of reports on title: *Orientfield Holdings Limited v Bird & Bird*

Reports on title – what to include when third party reports have been obtained

Summary

The Court of Appeal has rejected an appeal by solicitors who did not report to their clients the fact that planning applications had been granted near to the target Property prior to exchange. Whilst the issues on appeal concerned causation rather than breach, the case provides guidance as to what a solicitor who commissions a third party report should do in order to discharge its reporting duty.

The facts

Orientfield is a BVI company, the director of which is Ms Chow. On the advice of a friend, Ms Kwok, Orientfield located a property, 56 Avenue Road, to purchase as an investment. An offer of £25.75m was accepted by the sellers, Mr and Mrs Plant.

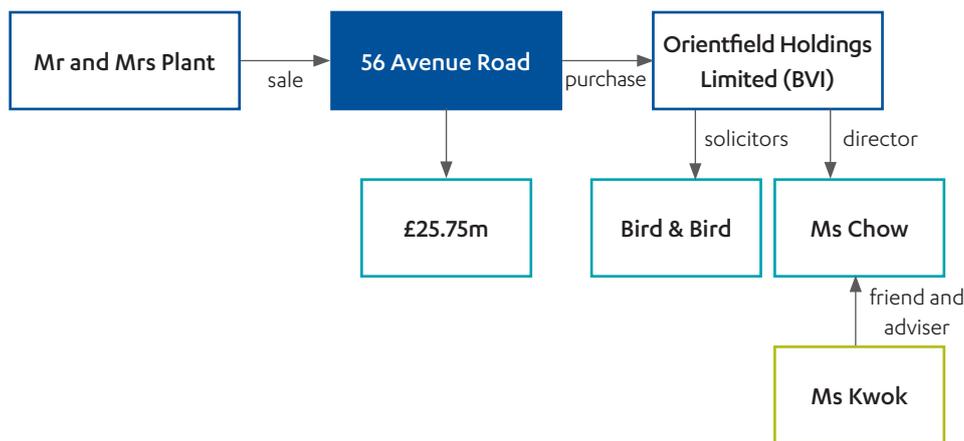
Solicitors, Bird & Bird, were instructed to act for Orientfield. They procured a “Plansearch Plus Report” (“the Report”). The Report revealed details of planning grants and applications within various radii of the Property. Two large applications (“the Applications”) were revealed in the Report as having had planning permission granted. They were also mentioned in the Summary section to the Report.

In its own Report on Title (“ROT”) to Orientfield, no reference was made to the Report, the Summary or the Applications. Orientfield exchanged contracts – without having obtained a valuation or a survey.

Any comments or queries?

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Following exchange, Orientfield learnt of the Applications. It decided to rescind the contract. Litigation ensued with the Plants which was settled on the basis that half of the deposit (of £2.575m) was returned. The solicitors were sued for the balance.

Trial

At trial, the Judge found that the solicitors failed to discharge their duty because “having carried out such a search [ie obtained the Report] [the solicitors] came under a duty to explain the results of the search to his client... There was in my judgment an obligation to include within the ROT a summary of the contents of the Plansearch report...”. It was also common ground that if enquiries had been made of the local authority using the planning references supplied, the Applications would have revealed the major development of two existing schools.

The Judge also concluded that it was **not necessary** to obtain a Plansearch report in order to discharge the conveyancer’s duty. But having obtained one, the obligation to summarise it arose.

Appeal

The appeal related only to issues of causation. The Judge was criticised by the solicitors (1) for not having specified precisely what the ROT should have said (ie what paradigm advice would have been and whether it would necessarily have identified the Applications) and (2) for not analysing sufficiently how Orientfield would have acted if it had received that advice (particularly as it seemed very keen to proceed – given the lack of a survey.)

The Court of Appeal accepted that the Judge could have developed the causation part of his judgment more fully. But the Judge’s reasoning was adequate. Essentially paradigm advice would have included a summary which would have mentioned the Applications and explained the potential significance of the Applications and possible next steps (although the Court of Appeal itself did not explain the level of detail required to explain the potential significance – should, for example, it just identify the fact that the schools were to be redeveloped and the fact that there may be disruption whilst building works were undertaken ?).

The defence case that it was reasonable to limit any reporting obligations to applications within a 100m radius was also rejected. Here the Applications were of sufficient importance that they were worthy of summary, even though they were not immediately adjacent to the Property.

Conclusions

The case on appeal was narrow. The wider point for conveyancers is that having commissioned the Report at the very least it was necessary to summarise it and send that summary to the client. The precise nature of the summary will be highly fact specific – considerations such as urban density, value of the property to be purchased, client attitude to risk and nature of any applications will all need to be considered. There is also a tension between a solicitor sending everything on to a client and the client who might say they just want a “high level” summary. Terms of engagement which say that, for example, the summary sections of any third party report will be sent to the client as a matter of course for **the client** to identify any areas of further investigation, may have helped in this case (we would not expect this risk management solution to be suitable in respect of title issues, but for commercial issues such as neighbouring planning applications it could be workable).

From a professional indemnity perspective, the Court’s finding that Orientfield would not have proceeded to exchange if adverted to the Applications is also worthy of comment. The purchase appears to have been speculative – the Property was not visited by Ms Chow and there was no survey or valuation. But, despite that, the Court of Appeal agreed that it would not have proceeded to exchange had it known of the Applications.

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