

Legal alert

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Replies to enquiries – let the seller beware

Greenridge Luton v Kempton Investments [2016] EWHC 91 (Ch)

On the sale of a commercial property, one of the first legal steps is for the seller's solicitor to help his or her client to answer the Commercial Property Standard Enquiries (i.e. the industry-wide standard pre-contract enquiries).

The task of answering can be time-consuming and fraught with traps. Hence, in times past, the practice was to be evasive, with answers such as "inspection will reveal", "the buyer must rely on its other searches and enquiries" and "this enquiry is too wide" etc. Today, replies of this sort will often not be acceptable to buyers and there is a risk that the transaction will be slowed down as a consequence.

The recent case of *Greenridge v Kempton* is a cautionary tale of how easy it can be for a seller to suffer the consequences of giving a misleading reply to an enquiry.

In this case, Greenridge had entered into a contract to buy three office buildings in Luton from Kempton for just over £16m. The tenant of most of the space in the buildings was TUI Travel, who used it as their UK headquarters.

Before exchange of contracts, Kempton had given to Greenridge replies to the CPSEs. In particular, enquiry 10.8 of CPSE.2 asks:

"Except as already disclosed, have there been any complaints or disputes relating to the service charge?"

Kempton's reply was:

"There have been no complaints or disputes as such. From time to time TUI have raised queries on mainly historic issues. TUI have recently raised further enquiries."

In fact, Kempton's reply was economical with the truth. TUI had been in dispute with Kempton over the management of the service charge for several years. Moreover, TUI had recently withheld nearly £100,000 from the latest service charge demand.

Greenridge discovered the true situation before completion and promptly rescinded the contract on the grounds of Kempton's false representations. Greenridge then successfully sued Kempton for the return of the contractual deposit, plus damages of £396,000 to compensate for its wasted costs incurred in progressing the abortive transaction.

In this case, the seller's misrepresentations were deliberate. Kempton had intentionally suppressed relevant information of which it was well aware. But the case nevertheless serves as a reminder that, even if there is no deliberate intention to mislead, a seller can still be liable for an imprecise reply to an enquiry. For example, in the 1994 case of *William Sindall plc v Cambridgeshire C.C.*, the seller replied "not so far as the seller is aware". This was true so far as the seller's actual knowledge was concerned. However, the court held that the reply meant that the seller was not aware of any such matter after checking all the relevant papers in its possession and making all reasonable enquiries which a prudent seller would be expected to make. Had the seller carried out those checks it would have been aware of the relevant information.

Solicitors must therefore be sure to warn their seller clients to carry out full research and make full disclosure when replying to enquiries. A mistaken or untruthful reply is likely to have serious consequences for the seller.