

Failure to Complete

The recent downturn in the commercial property market is likely to lead to an increase in the number of purchasers failing to complete. In such circumstances, the vendor's ability to forfeit the deposit will be a key consideration for the parties. In the recent decision of *Midill (97PL) Limited v Park Lane Estates Limited (1) and Gomba International Investments Limited (2) [2008]*, the High Court examined what is meant by being "ready, able and willing to complete."

Case Facts

In short, the Claimant purchaser agreed to buy shares in a company that owned a property on Park Lane from the Defendant for £4 million. The purchaser paid a 10% deposit on exchange of contracts but subsequently failed to complete.

Clause 5 of the Agreement stated that completion would only take place after the vendor had (amongst other things) delivered to the purchaser, (1) signed stock transfer forms and share certificates; (2) the resignations of the officers of the company; (3) the company seal, statutory books, certificate of incorporation and title deeds.

The vendor served a notice to complete and when the purchaser failed to comply, the vendor terminated the agreement and sold the property to another buyer at a profit.

Ready able and willing

In order to validly serve a notice to complete, the Standard Conditions of Sale require the party serving the notice to be "ready, able and willing to complete." The purchaser argued that the notice to complete was invalid as the vendor was not, at any time, in a position to hand over the documents referred to in clause 5 and accordingly was not "ready, able and willing to complete". The vendor argued that all that was required was that the vendor had to be able, within a reasonable time, to set up the necessary administrative arrangements to enable completion to take place. It was not necessary for the company documentation to be physically available on the intended day of completion.

The court held that the Defendant was ready, able and willing to complete and that it was entitled to retain the deposit. The decision distinguishes between being ready to complete immediately, and being ready to complete subject to minor administrative matters. The court confirmed that a vendor could still be "ready, able and willing" to complete even if minor administrative tasks were required in order for completion to take place. In practice, documents needed for completion are often only completed on the day of completion. The court understood that if a purchaser makes it clear to the vendor that it is not in a position to complete, then a vendor might not ensure that all administrative matters required for completion had been dealt with.

Nevertheless, vendors should still prepare as fully as possible for completion as the less the vendor has to do, the more likely a court is to find that the vendor was "ready, able and willing" to complete and that any notice to complete is valid.

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