



LEGAL BRIEFING

A false move

Connolly Ltd v Bellway Homes Ltd

High Court, HHJ Smith QC [2007] EWHC 895

The Facts

Connolly Ltd (“Connolly”) sought rectification of a contract for the sale of a piece of land for mixed commercial and residential development or damages for deceit. The purchaser was Bellway Homes Ltd (“Bellway”). Connolly contracted to sell Bellway a development site subject to planning permission being granted. It was agreed between Connolly and Bellway that the purchase price would be indexed to ensure that, pending completion of the sale, Connolly would share in any increase in the value of the land. Bellway was agreeable, provided an allowance was made against the increase in the value of the land for any increase in building costs. A formula for the calculation of the indexation was inserted into the contract document.

After planning permission was obtained, the application of the indexation formula did not result in any uplift to the sale price.

The Issues

Should the contract be rectified on the basis of either mistake? Alternatively, could Connolly recover damages for deceit?

The Decision

The contract should not be rectified on the basis of mistake as the evidence did not show that Bellway were mistaken when entering into the contract. Although the formula did not reflect Connolly’s intentions, it did reflect Bellway’s intentions.

When making the proposal for the figures to be used in the indexation formula, it was shown that Bellway did not believe that the amount used was a genuine or realistic estimate of the average achievable sales price. The evidence showed that when the figure was put forward by Bellway, Bellway knew it was not a genuine estimate. However, Bellway intended Connolly to believe that the figure was a genuine estimate. As Connolly had relied on this representation, they were able to recover damages for Bellway’s deceit.

Comment

This case highlights the difficulties involved in rectifying contracts on the basis of mistake. In this case, Connolly were unable to succeed on the basis of unilateral mistake as they were unable to show that they were mistaken about the indexation formula. Further, as the formula reflected Bellway’s intentions, Connolly were unable to show a mutual mistake had occurred as both parties must be mistaken in order for this argument to succeed. Parties to a contract must ensure that they obtain independent advice on matters such as valuations before entering into contracts as it will be very difficult later to attempt to rectify the contract.

Connolly did succeed in recovering damages on the basis of deceit. Connolly

did so as they were able to show that Bellway had made a clear representation of fact (an appropriate net sales price per square foot), this representation was false, Connolly relied on the representation and therefore suffered damages. This is a rare occasion that a claim in deceit was successful.

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