

On the wrong track

The Message:

Cogent evidence is required to support a court's finding that someone has been dishonest.

The Case:

Morgan v Pooley [7 October 2010] considered whether purchasers of property could claim damages when, following completion, it transpired that an important fact concerning the adjoining property had failed to be disclosed by the vendors.

The case concerned a period property worth over £1.6 million located in an area of outstanding beauty. To the south of the property lay open fields and alongside the southern boundary ran an old farm track which was seldom used. The Pooleys owned the property.

In 2006 the owners of the track applied for planning permission to build a new driveway along the line of the track. According to the records of the local council, a letter was sent to the occupiers of Pooleys' property notifying them of the planning application. The records also suggested that, for about three weeks, the council displayed notices giving details of the application.

Subsequently, the Pooleys decided to sell their property to the Morgans. As part of the conveyancing process, the Pooleys completed a seller's property information form, of which a key enquiry was – have you either sent or received any letters or notices which affect your property or the neighbouring property in any way (for example, from or to neighbours, the council or a government department)? The Pooleys replied in the negative.

The sale contract included a special condition seeking to prevent the Morgans relying on representations made by or on behalf of the Pooleys, with certain exceptions. The condition was highlighted to the Morgans well before the contract was signed.

Completion took place in 2007 and shortly after the Morgans moved in, they invited some neighbours around for a drink including the owners of the track and discovered their neighbours' plans to build a new driveway along the track. Subsequently, work began on the new drive, which most upset the Morgans because the peaceful field that had overlooked their property now included an unsightly and fairly busy drive. Most irritatingly, the neighbours had a lodger who was a DJ and returned in the early hours of the morning disturbing the Morgans.

The Morgans claimed damages from the Pooleys for misrepresentation and breach of contract, because they were not told about the existence of the planning application and, since becoming owners, the track was turned into a drive and the principal access to the neighbouring property. The Morgans stated that this seriously and adversely affected the privacy and seclusion of their property and thereby diminished its value. The Pooleys emphatically stated that they never received a letter giving notice of the planning application, nor did they see the displayed notices.

The High Court had to decide whether the Pooleys were telling the truth and were aware of the planning application affecting the track when they sold the property. The Pooleys' emphatic statements were influential on the Court's decision. It is well settled that where the court has to

make a finding as to whether someone has been dishonest, that finding must be supported by appropriately cogent evidence, even though it is a finding made on the balance of probabilities.

On the evidence, the Court found that the Pooleys did not receive the letter, nor were they aware of the notices and, therefore, the Pooleys did not misrepresent the position when they answered the enquiry as they did. The Morgans' claim, therefore, failed. The Court also considered that the non-reliance condition in the contract (which the Morgans could have challenged before signing, but did not) would have prevented a claim based on the case pleaded by the Morgans. However, if fraud had been pleaded and proved, then different considerations would apply, but the Morgans never alleged fraud or dishonesty by the Pooleys.