

Wickens-v-Cheval Property Developments Limited (8 September 2010)- Buyers Beware.

The Message: Buyers need to be clear as to what is included in their purchase.

The Case: A purchaser sought a price reduction on the basis that fixtures and fittings worth some £300,000 had been removed from the property prior to the sale to him. On 2 July 2009, Mr Wickens exchanged contracts to purchase Earl's Croome Court in Worcestershire from the Defendant for £1.3 million. The property was the former seat of the Earl of Coventry but it had been repossessed and was unoccupied when Mr Wickens inspected it on 16 June 2009. It was apparent on his inspection that the property contained valuable fixtures and fittings such as fireplaces and oak panelled doors although there was some damage to some of these features or parts missing.

Unfortunately, the property was burgled between the time of this inspection and the exchange of contracts. 3 fireplaces were removed as well as a large number of the doors and carpets and a chandelier. Mr Wickens claims it will cost £300,000 to replace everything that was stolen.

The contract provided that the sale was to include all fixtures and fittings and stated that the property was being sold in its present state and condition. No schedule of fixtures and fittings was attached. Mr Wickens claimed that he had contracted to buy all the fixtures and fittings present during his inspection and he sought to reduce the price to take account of their theft.

The Defendant relied on the wording of the contract to argue that all that Mr Wickens had contracted to buy were those fixtures and fittings present at the time of exchange of contracts. As they had not been responsible for the removal of any items, or for misleading Mr Wickens, they claimed that they were entitled to rely on the property being limited to its actual state and condition on 2 July 2009.

In construing the contract, the Court had to seek to establish from the relevant background circumstances what the intentions of the parties had been? Mr Wickens argued he was reasonably entitled to believe he was contracting to buy the property as it was when he inspected. He further relied on a telephone conversation with the Defendant's agent just before exchange in which the agent had said that someone had looked through a window and mentioned a fireplace was damaged. Mr Wickens claims he thought this was just a reference to pre-existing damage he already knew about and that the agent had deliberately made him think this was the case and nothing had changed

The Defendant's claimed that Mr Wickens had actually been alerted to the fact there was a possibility of there having been a break-in and items having been removed and the Court held that Mr Wickens was aware that some damage had been reported but he had assumed this was nothing new and he had declined the opportunity to further inspect before proceeding. Since he was aware that something may have changed, and that the true facts were not known as the Defendant's agent had not inspected, he could not have been proceeding on the basis that the position remained exactly as at when he had inspected.

In the absence of any duplicity or fraud by the Defendant, the Court held that the fixtures and fittings intended to be included were only those there at exchange and not on inspection. Mr Wickens accepted the risk of there being a change by not re-inspecting.

However, that is not the end of the matter as the Court allowed Mr Wickens to amend his case to claim he was misled by the Defendant's agent not revealing all she knew and knowingly creating the impression that nothing had changed. If Mr Wickens can establish that this was the case, then the Court held that Mr Wickens may be able to succeed in establishing that the intention was to include everything he had originally seen and that the contract should be construed accordingly. Otherwise, he may simply be able to rely on a claim of fraud.