

**Sharma & Kuruppu-v-Simposh Limited (23/11/11)-recovery of deposit under void contract.**

**The Message:** Oral contracts in relation to land are not worth the paper they are written on!

**The Case:** The Court of Appeal has made clear that sometimes payments made under void contracts for the purchase of land are not recoverable. In 2007, the Claimants reached an agreement with the Defendant property developer to buy for £1.1 million the whole of a development of 8 flats that the Defendant was constructing in Loughborough Road, Leicester. The Claimants paid an initial non-refundable deposit of £1,600 to secure an exclusive period of 2 weeks to negotiate the purchase whilst the Defendant ceased marketing the development elsewhere. Then, once terms were agreed, the Claimants paid a further £53,400 to make the deposit up to 5% of the agreed price.

The Defendant then proceeded with completing the construction of the 8 flats but, due to the fall in the financial market at the end of 2007, the Claimants decided they did not want to proceed with the purchase.

The Claimants then sought the return of the sum of £53,400 on the basis this sum was refundable as there was no enforceable contract between the parties for the sale and purchase of the development as everything had been agreed orally. They relied on Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 which provides that land contracts have to be in writing and thereby makes oral contracts void.

The Claimants succeeded at trial on the basis that payments made under void contracts are generally recoverable but the Defendant appealed on the basis that it had performed its obligations and should be entitled to keep the whole sum of £55,000 paid.

The Court of Appeal held that the essential question to be answered was whether the Claimants were entitled on the facts of the case to restitution of monies paid under an agreement that lacked validity and had no contractual effect?

The law of restitution is designed to stop the recipient of money paid under an ineffective contract being unjustly enriched. If the expectations of the payer have not been fulfilled, then the Court will order the return of the sum paid.

Ordinarily, a deposit paid under an oral agreement for land will be recoverable if the sale does not proceed as the expected transaction, being the reason for the payment, will have failed to materialise.

However, in this case, the Court held that the Claimants had actually received what they had paid for. The Defendant had taken the development off the market and had proceeded with the works on the basis that the Claimants would have the right to acquire the completed development for the agreed sum. This was not a case where the Claimants had been unjustly treated or taken advantage of. On the contrary, all the Claimants' expectations had been met.

The Defendant claimed that it was unjust for the Defendant to retain sums where it had no contractual right to do so, save for the sum of £1,600 paid to secure the 2 week lock-out negotiating period. However, the Court noted that ownership of property could pass under

illegal contracts where the property was delivered to the purchaser and saw no reason why ownership of a deposit could not pass under unenforceable contracts. In this case, the Court held that the payment of £53,400 had never been made on a conditional basis whereby the Claimants could recover it if they decided not to proceed. In return for having made the payment, the Claimants had acquired the right to buy the development on completion for the agreed price.

Accordingly, the Court held that the law of restitution could not come to the aid of the Claimants. There had been no failure by the Defendant which entitled the Claimants to their money back.

Clearly, it was ill- advised for both parties not to record their agreement in writing and, whilst the Defendant did not have to repay the sums it received, the lack of any enforceable contract did mean it could not make the Claimants complete the purchase of the development and nor could it recover any damages against them for any drop in value in excess of the deposit.