

It's the effort that counts!

Yewbelle Ltd and Knightsbridge Green Ltd –v- London Green Developments Ltd [23 May 2007] Court of Appeal

The Message:

Where completion of a sale contract was dependent on a planning agreement being entered into, the contract could be terminated where the seller failed to obtain the agreement but proved he had used all reasonable endeavours to obtain it.

The Case:

Knightsbridge Green Ltd entered into an agreement for the sale of a property in South London for £13.75 million to London Green Developments Limited (LGD). Under the agreement, LGD was not obliged to complete the purchase until an agreement under section 106 of the Town and Country Planning Act 1990 had been entered into with the planning authority. The sale agreement provided that Knightsbridge was obliged to use all reasonable endeavours to secure a completed s106 agreement substantially in the form of the draft attached to the sale agreement.

Soon after the sale agreement was entered into the requirements of the planning authority changed in relation to the s106 agreement. To compound the situation and crucial to this case, it turned out that a small parcel of land, known as the third party land, at the south-east corner of the property which was needed for its proposed development did not belong to Knightsbridge but was in fact owned by an entirely independent company. This impacted on the obtaining of the requisite s106 agreement.

Subsequently, Knightsbridge transferred the property to Yewbelle Ltd subject to the sale agreement with LGD.

In February 2006, Yewbelle/Knightsbridge's solicitor informed LGD's solicitor that it would not be possible to obtain the s106 agreement in the form attached to the sale agreement and asked if the sale could be completed without the s106 agreement being in place. If it could not be, the solicitor stated that Yewbelle would have no option but to treat the sale agreement as at an end. Subsequently, Yewbelle's solicitor told LGD's solicitor that since LGD had stated it did not wish to complete the purchase without the s106 agreement, the sale agreement should be treated as at an end because the s106 agreement could not be obtained.

In June 2006, LGD came to an agreement with the owner of the third party land in relation to the s106 agreement. Importantly, however, LGD did not inform Yewbelle that it was aiming to do this, nor was Yewbelle told that it had done it until some time later during the course of the subsequent proceedings.

Proceedings were issued in June with LGD seeking to require Yewbelle to complete the sale of the property, even though there was no s106 agreement. Yewbelle argued that by then the sale agreement had already come to an end.

The question for the Court of Appeal was whether Yewbelle was still bound to sell the property to LGD, or whether having used all reasonable endeavours to overcome the problem relating to

third party ownership, Yewbelle could walk away from the agreement if it failed to overcome the problem within a reasonable time.

The Court of Appeal decided by a 2:1 majority that Yewbelle had used all reasonable endeavours and was able to walk away from the agreement. No reasonable endeavours could produce the requisite s106 agreement. There was nothing else that Yewbelle could reasonably have done, with any real or significant prospect of overcoming the problem. The fact that LGD had failed to inform Yewbelle of what it was doing in relation to the third party land was an important omission.

594 words including bylines