

Clearly Drafted Contracts a Must

In recent months it has become rare to open a newspaper or watch a news bulletin without being reminded that we are in the midst of an economic downturn, both in the UK and globally. Banks will only offer stricter lending terms, house prices are falling, construction companies are downing tools and individuals and businesses alike are just not buying as they attempt to tighten their purse strings to stay afloat during this difficult period.

When times are uncertain the best method of protection for landowners and developers is to create certainty within contracts entered into and to be prepared for the worst case scenario. Prevention is always better than cure and it is imperative that contracts are clearly drafted to minimise the risk of litigation in the event of one party breaching a contract.

The law states that a contract for the sale of an interest in land can only be made in writing with all terms having been expressly agreed by the parties. This means that contracts should be drafted with clearly defined terms, setting out all the conditions of the transaction and be signed by all the parties. A court cannot enforce negotiations; it is therefore essential that a contract is signed, as once signed, it becomes a legally binding document. Once legally binding there is less scope for a party walking away from a contract to avoid the consequences as they will know they will forfeit their deposit and potentially face court action.

The situation becomes more problematic when terms are agreed verbally but are not written into the contract, especially if the verbal agreement is subsequently breached. Whilst the law states that a contract for the sale of an interest in land must be in writing, a party that has suffered detriment due to a breach of promise by another may attempt to pursue the breaching party in the courts by claiming proprietary estoppel. This is compensation based on a breach of a promise, where there are no signed terms. The claim is an equitable one and is based on a landowner acting unconscionably by promising a person a right to their land. That person acts to their detriment in relying on the promise and the landowner then denies them the right promised. Whilst this does offer a party some redress it can be a difficult claim to prove which is why clear written terms are always preferable.

A recent example of a party walking away from an agreement was illustrated in a property deal worth £1.5 billion involving two large property groups. As a result of the challenging market the developer walked away from the contract resulting in the loss of a £1.5 million deposit. Not only did the developer forfeit a large sum of money but they are now also facing legal action as the seller is pursuing the matter in the courts. The seller may be looking to seek redress from the courts in the form of specific performance. If the courts ordered specific performance the developer could be forced to honour the contract and carry out the obligations that had been previously agreed. Therefore if a party simply walks away from a contract they could stand to lose more than just their deposit if the contract is drafted in such a way to allow the other party to claim specific performance.

However it appears that the courts will not necessarily always seek enforcement of the terms of a contract despite the same having been expressly agreed between the parties. If the Standard Commercial Property Conditions have been incorporated into a contract the seller is entitled to keep the deposit if the buyer rescinds the contract or does not complete the purchase having been served notice to complete. However a recent case saw a court order the seller to repay a deposit that had been forfeited by the purchaser. This illustrates that the courts have the discretion to override the terms of a contract if they believe there were valid reasons as to why the contract was not completed. Valid signed terms are always preferable to verbal agreements and in these uncertain times it is imperative that parties ensure they have clearly drafted contracts.

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