

Oakglade Investments Limited v. Dhand [2012] EWCA Civ 286

FACTS

The claim concerned the validity of notices to complete. P had agreed to underwrite the sale of a number of properties at auction. After the auction, V served notices to complete requiring P to complete the underwriting agreements. However, the completion statements provided by V indicated a higher price than the signed underwriting agreements showed. P did not respond and V forfeited the deposits. In an action by P to recover the deposits, V alleged that P had bid for and purchased the properties at the higher prices at auction. P denied having purchased at the auction; accepted that it was bound to purchase pursuant to the underwriting agreements; but that the notices to complete were invalid because V was seeking a greater price than was due under those agreements.

The trial judge found that P had not purchased at auction and that the notices to complete was invalid because V was only willing to complete at a price which was greater than the price under the underwriting agreements. On appeal, V contended that the notices were - on their face - valid notices in relation to the underwriting agreements; that by erroneously asking for more in its completion statement, V had not repudiated the underwriting agreements; and (applying *Carne v. Debono* [1988] 1 WLR 1107) P should have tendered what he said was the correct amount.

DECISION

The Court of Appeal dismissed the appeal. The notices to complete were invalid because V was requiring P to pay larger amounts than he was contractually bound to pay under the underwriting agreements. It followed that V were not "ready to complete" the contracts that had actually been agreed.

QUOTES

"The notices were nullities for the simple reason that, on the facts found by the judge, the defendants were not legally entitled to rely upon failure to comply with notices to complete contracts on terms different from those by which Mr Dhand was in fact bound" (paragraph 32).

"It was clear from the notice, read, of course, with the completion statements upon which they followed, that the defendants were requiring Mr Dhand to complete on terms that he paid to the defendants larger amounts than he was contractually bound to pay to them. ... They were not notices to complete the original Underwriting Agreements dated 21 May at the settled prices. They were not notices to complete those identical contracts ... The notices related to non-existent contract terms, as none of the material facts relied on for the varied contract terms were established. (paragraph 38)

COMMENT

V argued that, by considering the server's state of mind as to the price, the Judge's approach would encourage spurious challenges to the validity of notices that would turn an examining the server's intention and that certainty favoured the approach in *Carne v. Debono*. There is probably some tension between this decision and *Carne v. Debono*. From a practical point of view, the decision may make it more difficult to force the other party to complete by serving a notice if there is a hint of disagreement as to the terms of the contract or their effect. It also emphasises the need to resolve any disputes on the completion statement in good time.