

The David Roberts Art Foundation Limited v Riedweg [2019] EWHC 1358

A charity (DRAF) contracted to sell a property to a buyer (R) for £8.01m. Following a failure to complete, DRAF served a notice to complete on R and then gave notice to R that it was rescinding the contract and forfeiting the deposit (£410,000).

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A contract was not automatically void for failing to comply with the rules governing disposals of land by charities.

Facts

A charity (DRAF) contracted to sell a property to a buyer (R) for £8.01m. Following a failure to complete, DRAF served a notice to complete on R and then gave notice to R that it was rescinding the contract and forfeiting the deposit (£410,000)

R claimed that the contract was void or unenforceable because DRAF had failed to comply with certain requirements of the Charities Act 2011 (the 2011 Act).

Issues

1. Did the contract contain a statement as required by section 122(2) of the 2011 Act and, if not, what were the consequences?

[Section 122(2) provides that a sale contract must include a statement that the land is held by or on behalf of the named non-exempt charity, that the disposition is not within a limited range of excepted dispositions under section 117(3) and that the restrictions on disposition contained in sections 117 to 121 apply.]

2. Had there been a failure to comply with section 119 of the 2011 Act and, if so, what were the consequences?

[Section 119 provides that a non-exempt charity can dispose of land without a court order, but the trustees must have first:

- obtained and considered a written report on the proposed disposition from a qualified surveyor;
- advertised the proposed disposition for such period and in such manner as is advised in the surveyor's report; and
- decided that they are satisfied, having considered the surveyor's report, that the terms on which the disposition is proposed to be made are the best that can reasonably be obtained for the charity.]

Decision

1. Although there was no such statement in the contract itself, there was a statement in the draft transfer attached to the contract and that should be treated as part of the contract.

The statement in the draft transfer was incomplete (it did not confirm that none of the exceptions in section 117(3) were applicable), but Parliament cannot have intended that a failure to include such a statement made the contract void (that would be a

disproportionate outcome, as the contract statement was merely a means of flagging up certain matters for a buyer).

2. In this case, the trustees had failed to advertise the property and there was no evidence that they had decided to proceed after having considered the surveyor's advice and concluded that the terms of the sale were the best that could reasonably be obtained.

Not every failure to comply with section 119 invalidated a contract. The onus though was on DRAF to show that a failure to comply would have made no difference to the ultimate outcome (i.e. the terms of the disposal were still the best that could reasonably be obtained) and this was something that could only be decided at a full hearing based on all the evidence.

Points to note/consider

1. This case is a useful reminder of some of the points that must be considered when a charity is disposing of land.

This case is unusual though as it is R who wants to argue that DRAF's failure to comply with the provisions of the 2011 Act gives R a defence to a claim for breach of contract and entitles R to a return of the deposit. Usually, a buyer wants to rely on the provisions of the 2011 Act to ensure that any transaction it has entered into with a charity is valid.

2. Under section 122(3) of the 2011 Act, a buyer from a charity is protected as long as the transfer deed contains a certificate under section 122(3) (the transfer deed should also contain the section 122(2) statement mentioned above). Under this certificate, the charity's trustees certify that:

"they have power under the trusts of the charity to effect this transfer and they have complied with the provisions of sections 117 to 121 of the Charities Act 2011 so far as applicable."

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