

Oakley and others v Harper McKay Developments Ltd [2018] EWHC 3405 (Ch)

Failing to assign the copyright in plans on or before completion could have meant that a seller's notice to complete was invalid.

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Facts

The sellers (S) entered into a contract to sell property for residential development to the buyer (B) for £2.225m. The contract obliged S to assign to B the copyright in plans and reports prepared by S's architects (the Plans).

After a revised contractual completion date had passed without completion taking place, S served a notice to complete on B. As B then failed to complete within 10 working days from service of the notice to complete, S purported to rescind the contract (and forfeit B's deposit).

B argued that S had not been ready, able and willing to complete when it served the notice to complete as S had not by then complied with its obligation to assign the copyright in the Plans to B.

Issue

Was S ready, able and willing to complete when it served its notice to complete (if not, the notice to complete would be invalid)?

Decision

The court agreed with B that a failure to assign the copyright in the Plans to B was a matter of substance (not an administrative formality) so potentially S could not be said to have been ready, able and willing to complete when it served the notice to complete.

Rather than assign the copyright, S had obtained from the architects a non-exclusive licence to reproduce the Plans. However, despite numerous opportunities to do so, B had never objected to this. By its conduct, B was taken therefore to have waived its right to insist on a full assignment of the copyright. Having therefore procured sufficient licences to use the Plans, S had accordingly been ready, able and willing to complete when it served the notice to complete.

Points to note/consider

1. Despite the outcome here, this case is an important reminder of what ready, able and willing to complete means when looking to serve a notice to complete. It usually boils down to whether there are matters of substance still outstanding or whether what is outstanding are merely administrative arrangements necessary to enable completion to take place within the time-frame specified in the notice to complete.
2. B argued that any waiver of its right to insist on an assignment of the copyright in the Plans was a material variation of the contract and therefore void for failing to comply with the formalities in section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 (which applies to variations in a contract to dispose of an interest in land as much as it applies to the creation of such

contracts). The court however decided that section 2 did not apply to a waiver of a right under a contract (as opposed to an express material variation).

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