

## **A warning to surveyors: remind your client of impending deadlines**

This note provides a summary of the recent decision in the case of *Littlewood v Radford and Boston* where the Court of Appeal found that a firm of surveyors had a duty to remind a client of an important deadline, notwithstanding that they had previously notified the client of the deadline, and had advised that they would no longer continue to act if an outstanding invoice remained unpaid.

### **Littlewood v Radford and Boston (formerly t/a Boston Carrington Pritchard) [2009] EWCA Civ 1024**

Mrs Littlewood (“L”) became entitled to exercise her right to acquire an extended lease of her flat in 1999 under Chapter II, Leasehold Reform, Housing and Urban Development Act 1993 (“the 1993 Act”). L retained surveyors Radford and Boston (“RB”) to act for her in connection with the acquisition.

L served a section 42 notice on 1 March 2000, and the counter-notice was served on 8 May 2000. All terms apart from the premium were subsequently agreed, meaning that unless agreed in the meantime, the amount of premium would need to be referred to the Leasehold Valuation Tribunal (“LVT”) during the period between 8 July 2000 - 8 November 2000.

No agreement as to the premium was reached, and L failed to make an application to the LVT by 8 November 2000. As a result, her section 42 notice was deemed to have been withdrawn, and consequently she lost the opportunity to buy an extended lease for £380,900 (a figure since determined by experts) under the 1993 Act, and instead later purchased it for the commercially agreed sum of £485,000.

L sued RB for damages, claiming that in breach of retainer, RB negligently failed to make, or advise L to make, an application to the LVT by 8 November 2000.

#### **The retainer**

RB had issued an invoice to L in May 2000 which remained unpaid. The terms of the acquisition, apart from the premium to be paid, were agreed by 5 June 2000.

In June/July, RB advised L of the window of 8 July 2000 - 8 November 2000 during which the application to the LVT would need to be made. No instructions were given by L to RB to take the matter forward.

RB then wrote to L on 1 August 2000 chasing payment of the May invoice, and stating that if it remained outstanding RB would be unable to continue to act on L’s behalf. RB effectively closed their file in mid August. L subsequently wrote to RB in October 2000 providing information relevant to the acquisition but RB did not respond.

#### **The Decision**

The trial judge held that RB were not negligent, finding that their retainer had terminated on 5 June 2000, and they had previously advised L of the need to make an application to the LVT.

The Court of Appeal overturned this decision, finding that there was no evidential basis to support the assertion that the retainer had terminated on 5 June 2000. The Court of Appeal pointed to RB’s letter of 1 August 2000 chasing payment of their outstanding invoice as evidence that RB positively regarded themselves as still acting for L.

The Court of Appeal found that RB’s continuing retainer required them, as the deadline loomed, to repeat to L the need to apply to the LVT before 8 November 2000, if she wished to keep her claim alive,. The appropriate time to do this would have been in response to L’s correspondence in October 2000.

The Court of Appeal stated that L was inexperienced in the field, and just the sort of client who could be expected to rely on a professional adviser to advise her, when the time arose, of the need to take the appropriate procedural steps. In the circumstances of the retainer, RB was under an implied duty to remind L even though his express duties were limited.

## Recommendations

This case is a warning to surveyors and professionals generally, and the following can be taken from it:

- (a) Clients should be advised and reminded of important steps that must be taken, particularly where deadlines are imminent and / or the client is inexperienced in the relevant field.
- (b) A suitable approach to client care and contact should be maintained throughout the retainer, given that a client who is inexperienced in the field may place significant reliance on their professional advisers.
- (c) If it becomes necessary to terminate a retainer, clear communication should be used so that the position is clear to both parties. This case demonstrates that a warning that you will stop providing services if invoices remain unpaid may not be sufficient to terminate.
- (d) It would be wise to again remind the client of any impending deadlines in the termination letter.
- (e) A client should not be ignored if they attempt to maintain contact following termination of the retainer. They should be reminded of the fact that the retainer has ceased and the professional is no longer acting and, where there are impending deadlines, you should recommend that they seek urgent professional advice.

For further information contact:

Paul Redfern (Partner)

Tel: 0117 915 4164

Email: [p.redfern@beale-law.com](mailto:p.redfern@beale-law.com)

Kristina Vongas (Trainee Solicitor)

Tel: 020 7420 8667

Email: [k.vongas@beale-law.com](mailto:k.vongas@beale-law.com)

## Beale and Company

Beale and Company Solicitors LLP ([www.beale-law.com](http://www.beale-law.com)) is a niche commercial law firm which specialises in providing advice to the professions, insurance and construction industries. Chambers Guide to the Legal Profession 2009 describe us as:

*"... at the top of the technology and construction market and is "a tight ship that's fantastic at all levels." It offers a personalised and friendly service that clients appreciate: "It successfully avoids the big, corporate firm mentality, with long-term members and an approachable manner," commented one. The firm is visible on significant construction projects in the market and is many clients' first port of call for tricky negligence cases."*

The firm has offices in London, Dublin and Bristol.

January 2010

Beale and Company Solicitors LLP

London: Garrick House · 27-32 King Street · Covent Garden · London · WC2E 8JB · T: +44 (0)20 7240 3474

Bristol: Venturers House · King Street · Bristol · BS1 4PB · T: 0117 915 4021

Dublin: Hamilton House · 28 Fitzwilliam Place · Dublin 2 · T: +353 (0) 1 775 9505  
[www.beale-law.com](http://www.beale-law.com)