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Update

Caselaw on warranty of authority breach continues to evolve

In September 2014, Insurance Day published 'Caselaw on warranty of authority breach continues to evolve.'

Breach of warranty of authority claims arise in circumstances where a solicitor is alleged to have incorrectly represented that he has authority to act on behalf of a particular client and induces a third party to act in a manner in which he would not have acted had the representation not been made.

They are common in mortgage fraud cases and are advantageous to claimants as liability is strict, there is no scope for raising contributory negligence arguments and there is no requirement for there to be a contractual or tortious relationship between the claimant and solicitor.

The key UK WoA case is *Penn v Bristol & West Building Society & Ors* [1997], in which the Court of Appeal held that solicitors had warranted they had authority to act on behalf of both husband and wife in relation to the sale of jointly owned property and thus were liable for losses arising when it transpired the wife had known nothing of the transaction.

More recent cases indicate a shift in approach.

In *Excel Securities v Masood* [2010], the judge held the solicitors had not impliedly warranted either the identity of their client or his title to the underlying property, but only that they had authority to act on behalf of the person claiming to own the property, or alternatively the same individual with whom Excel had been dealing in relation to the loan transaction.

Stevenson v Singh [2012] is another helpful case. Giving judgment, HHJ Seymour QC said: "It is unarguable that a solicitor could give a warranty of authority which went further than that he had a client who had given the solicitor the name which the solicitor identified to the opposite party."

Even if the solicitor was wrong in this regard, he found the only warranty that could be implied would be a limited warranty that the solicitors acted for a person calling himself by the name given – not that the person for whom they acted was in fact called by that name, still less that he was in fact the true owner of the relevant property.

The Scottish Courts have also departed from Penn. In *Cheshire Mortgage Corporation Ltd v Grandison* [2012], the Court declined to impose on a professional an absolute unqualified obligation amounting to a guarantee of his client's identity and title.

The Court found no justification for transferring, from lender to solicitors, the commercial risks involved in lending to a person who might or might not be all that he claimed. See also *Frank Houlgate Investment Co Ltd v Biggart Bailie LLP* [2013].

It is clear the court now differentiates between a warranty given as to the specific identity of a client and one simply setting out a solicitor's ability to act on behalf of a client.

It is increasingly difficult for a claimant to establish the sufficiently wide implied warranty needed to succeed in a breach of warranty of authority claim. Future claims may therefore be based in tort.

It was suggested in *Stevenson* there may be a tortious duty, owed by a solicitor to the counterparties to a transaction, to take reasonable care to satisfy himself as to the identity of his client.

The point was not developed further there, but it remains a realistic possibility for the future.

Further information

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