

Always read the small print

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Tom Ansell and David Richards affirm the principle 'buyer beware'

[Hardy v Griffiths \[2014\] EWHC 3947](#) provides a salutary lesson to buyers of residential property that they should instruct a surveyor to inspect the property before exchange of contracts. The case considered the responsibility of the sellers in making representations against the buyers' responsibilities to investigate the property.

The onus is on buyers to conduct full investigations

In March 2011, the Hardys accepted an offer of ?3.6m from the Griffithses. Contracts were exchanged the following day and a deposit of ?150,000 paid. The contract provided that the buyers had to pay a top-up on the deposit, equal to 10% of the purchase price, if they failed to complete on the agreed date. There were delays, so both parties agreed to a later completion date of 30 April 2012. The buyers' lender had a survey carried out following exchange of contracts, which stated the property was suffering from damp and rot. Accordingly, the buyers decided they did not wish to proceed and tried to pull out.

The conveyancing contract

Before exchange of contracts, the buyers' solicitor had written to the sellers, and the buyers verbally enquired of them and their estate agent about the possibility of damp or dry rot at the property, but its existence was not disclosed. The sellers' responses at the time were that they were not aware of any such issues, but the buyers should appreciate it was an old property and no warranty was given as to the condition.

The conveyancing contract was largely in standard form and did not cover aspects of the property's condition. It is therefore the buyer's responsibility to carry out all inspections required prior to this point, and they then take the property as they find it after exchange of contracts.

Clause 3.2.1 of the *Special conditions of sale* (4th edition) confirms that:

the buyer accepts the property in the physical state it is in at the date of the contract unless the seller is building or converting it.

As this was an express clause of the contract and the sellers were not building or

converting, it applied in its entirety.

However, the contract did contain a special clause limiting the scope of actionable representations to those made by the sellers' conveyancers before the date of the contract and agreed that such representations must give rise to a material difference between the descriptions and the value of the property. Neither the solicitors nor the sellers were specialists in damp and dry rot, and their replies clearly stated that they could not be taken to constitute a warranty as to condition.

The judgment

Judge Amanda Tipples QC found that defects of a physical quality are patent defects among those pursuant to condition 3.2.1, which a seller of land is not required to disclose to a prospective purchaser. This reinforces the Common Law rule of caveat emptor that it is the buyer's responsibility to discover the issues regarding the property's condition. A full structural survey should have been undertaken by the purchasers before contracts were exchanged.

The buyers' argument that the sellers had misrepresented the state of the property failed due to particular issues in the case:

- the special clause that the buyers had not relied on any representations, whether oral or written, save for those confirmed in writing by the sellers' conveyancers;
- the judge finding that the sellers had not been fraudulent, reckless or made any misrepresentation; they had not known there was damp when the buyers visited the property; and
- for there to be misrepresentation, there must be reliance on the representations made, and in this case there was no evidence that the buyers had read the sellers' responses.

The judge further found that in addition to the deposit of ?150,000 lost by the buyers, they also had to pay ?210,000 to make up the deposit of 10% of ?3.6m. The buyers had argued that they were entitled to withdraw and get a refund of the deposit and the sellers were in breach of contract. Although the sellers had resold the property and had no loss, the judge concluded they were entitled to rescind and get the deposit topped up to 10%.

Conclusion

The judgment sends a clear message that the onus is on buyers to conduct full investigations and ensure they are satisfied before purchasing a property. It is always advisable to instruct a specialist surveyor to inspect the property. A property purchase is one of the largest investments anyone will ever make, so being fully informed from both a legal and structural viewpoint is essential.

An appeal was heard in April 2016, but the original judgment was upheld.

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Further information

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