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COMPLETE PROPERTY SOLUTIONS

UNJUST ENRICHMENT

Re: Barton & Ors v Morris & Anor [2023] UKSC 3

The factual background to the dispute and the legal question at hand in this matter is deceptively simple: namely, when the seller of a property has agreed with a third party that an introduction fee will be paid if a buyer is found who is prepared to pay at least £6.5 million for a property, but then the purchase price is reduced below £6.5 million, can the law grant a reasonable sum of remuneration to the third party?

The oral agreement between the parties was that Mr Barton would receive £1.2 million as an introductory fee if the said purchase price of at least £6.5 million was reached. Mr Barton did introduce such a purchaser at this price however following negotiations due to the potential impact of the HS2 rail link, the purchaser paid £6 million. Considering which, Mr Barton did not receive the £1.2 million introductory fee and rejected a goodwill gesture payment of £400.00.

In the first instance, the High Court held that the oral contract was silent on the position if a buyer was introduced at the agreed price but did ultimately conclude the purchase for a lower amount: consequently, Mr Barton was not entitled to receive any payment.

The decision was appealed to the Supreme Court who held, by majority, that there could be no implied term of a reasonable fee: -

"[...] the effect of the contract as found by the judge was indeed that Mr Barton was only entitled to be paid in the event that they agreed the trigger for that payment occurred. To imply a term that Foxpace is liable to pay a commission in any other circumstance goes directly against what the judge found the parties had agreed."

The key factor in the decision was that there was no specific fee that the parties would have agreed in the circumstances that the ultimate purchase price was below £6.5 million, and it was not necessary to imply such a term to provide business efficacy to the agreement.

In the alternative, Mr Barton argued that he was entitled to payment due to unjust enrichment, namely the benefit of acquiring £6 million at his expense would be unjust given the circumstances. The Supreme Court again rejected this argument by Mr Barton: -

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"[...] for reasons which mirror the reasons for rejecting the implication of a contractual term. When parties stipulate in their contract the circumstances that must occur in order to impose a legal obligation on one party to pay, they necessarily exclude any obligation to pay in the absence of those circumstances; both any obligation to pay under the contract and any obligation to pay to avoid an enrichment they have received from the counterparty from being unjust. The "silence" of the contract as to what obligations arise on the happening of the particular event means that no obligations arise as Lord Hoffmann made clear in Belize cited earlier. This excludes not only an implied contractual term but a claim in unjust enrichment."

Although dissenting opinions were provided and the case was only decided by majority, the matter is a good reminder that, even if the outcome appears to be unjust, the Courts will not interfere with the terms of a commercial agreement. It is important that when negotiating a contract, the circumstances in which payment would be triggered are expressly stated.

For more information, please contact Andrew Dickinson (0113 225 8811 or AndrewDickinson@chadlaw.co.uk) or your usual Chadwick Lawrence contact.

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