



LEGAL BRIEFING

Lambson Fine Chemicals Ltd v Merlion Capital Housing Ltd (defendant/Part 20 Claimant) (1) Lambson Fine Chemicals Ltd (2) Gordon Fraser Hall (Part 20 defendants)

HHJ Thornton QC, [2008] EWHC 168 (TCC)

The Facts

In May 2004, Lambson Fine Chemicals Ltd sold a 40-acre industrial property to Merlion Capital Housing Ltd for £12.25 million. The property had been used for the manufacture of chemicals since the 1860's. By the late 1940's, it was owned by Laporte and used for the manufacture of sulphuric acid, sodium sulphate and salt cake. Lambson bought the property in 1975 and used it for chemical manufacturing processes. Lambson occupied the property until its sale to Merlion. Merlion planned to substantially redevelop the property, possibly for residential purposes: it is bounded by two rivers and is close to the centre of Castleford. On the date of the sale agreement, Savills provided a valuation report to Lambson which indicated that it was worth £135 million.

Shortly before the property was sold, ground investigation specialists carried out a number of borehole tests which found that the soil at the property was contaminated with waste product from gasworks known as "Blue Billy". Blue Billy is particularly dangerous as it contains high concentrations of cyanide. The sale went ahead notwithstanding, however Lambson agreed to a retention sum being held back pending removal of the Blue Billy from the soil. The bulk of the retention sum was eventually paid, but £150,506 remained outstanding. Lambson brought a claim for the balance of the purchase price. Merlion counterclaimed the sum of £425,597 for excavating and removing the soil impacted by the Blue Billy.

Merlion's case was that it entered into the sale agreement with Lambson in reliance upon a written representation made shortly before the sale by Lambson's director, Mr Hall, as to the extent of the contamination of the property; namely that he knew of no contamination other than that specifically identified in the environmental survey report and that the parties had agreed that borehole tests indicated a level of contamination for the property as a whole and should not therefore be interpreted as meaning that there was only contamination at the site of the boreholes. Merlion maintained that this representation was made fraudulently and that following the purchase, it discovered that over 14,000 tonnes of soil had been contaminated by Blue Billy.

The Issue

The main issue which arose at trial was whether the statements contained in the letter from Mr Hall before the sale was completed constituted an actionable misrepresentation.

The Decision

The Judge held that Mr Hall's letter could not be interpreted in isolation; the facts that the property was extremely valuable, Merlion was very keen to purchase it, the parties were sophisticated commercial organisations, Mr Hall

and Lamson had given full disclosure and had never sought to keep back or obstruct Merlion from whatever information it had reasonably required before the sale needed to be taken into account. It had also been known that there was heavy and widespread contamination across the site and that extensive remedial works would be required.

The Judge found that Mr Hall's pre-sale letter was straightforward and honest: Lambson had no knowledge of any further contamination beyond facts set out in the environmental survey report and there was no evidence to suggest otherwise. Mr Hall did not point out any potential omission or failure on the part of the ground investigation specialists. However the Judge held that he was under no obligation to do so. Accordingly, the Judge found that the letter contained no actionable misrepresentation.

It was therefore agreed that Lambson was entitled to the outstanding retention monies, with interest. In terms of Merlion's counterclaim, that was partially allowed, however overall there was a balance to be paid by Merlion to Lambson.

Comment

This case provides a reminder of the importance of carrying out thorough due diligence, particularly if you plan to redevelop that property for residential purposes which was previously used for industrial purposes. In this case, Merlion could have saved itself a headache by carrying out a more detailed analysis of the soil after receiving the environmental survey report but before the sale was completed.

This case also provides a reminder of what does (or does not) constitute an actionable misrepresentation and provides an example of where questions of good faith are subsumed into wider notions of fairness. The Judge's insistence on reviewing the alleged misrepresentation in context is sensible and may be indicative of the way the courts will continue to approach claims in this area.

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