Supreme Court--'a welcome ruling' reinforcing oral agreements

LNB News 13/02/2019 118

The Supreme Court has unanimously held in Wells (Respondent) v Devani (Appellant) [2019] UKSC 4 that there was an oral contract between a property developer and an estate agent, without the need to imply any terms into such a contract. Tricia Hemans of Falcon Chambers, Nick Southworth of IBB Solicitors, Peter Hall of Weightmans LLP and Gary Blaker QC of Selborne Chambers comment on the judgment. In particular, Blaker explains that 'this seems to be a sensible and practical decision which prevents a party from relying upon the imprecise nature of words to wriggle out of a contractual obligation.'

Wells (Respondent) v Devani (Appellant) [2019] UKSC 4

Background

The dispute in *Wells v Devani* was whether the parties had entered into a binding agreement that Mr Devani, an estate agent, would be compensated by way of commission, for his work in introducing a purchaser for Mr Wells' property development. Mr Devani maintained that in his initial telephone conversation with Mr Wells, he had stated that his commission was 2% plus VAT. The County Court had found that there was an enforceable agreement but that since Mr Devani had failed to comply with his obligations under the Estate Agents Act 1979 (EAA 1979) as to the information to be provided to Mr Wells, his recovery was reduced by one third.

The Court of Appeal allowed Mr Wells' appeal, concluding that despite Mr Devani stating his commission rate in the telephone conversation, there was no discussion as to what would trigger the commission payment and therefore the agreement was not sufficiently complete so as to be binding. For details of the Court of Appeal decision, see News Analysis: When is a contract sufficiently complete to be binding? (Wells v Devani).

Judgment

The Supreme Court unanimously allowed Mr Devani's appeal and dismissed Mr Wells' cross-appeal on the EAA 1979 point. Lord Kitchin gave the lead judgment (with whom Lord Wilson, Lord Sumption and Lord Carnwath agree). Lord Briggs gave a concurring judgment.

Lord Kitchin noted that it is a matter of objective assessment as to whether the parties by their words and their conduct intended to create a legally binding relationship. Where the words and conduct relied upon are so vague then the court may not be able to identify the terms on which the parties have reached agreement. The courts are reluctant to reach such a conclusion, however, where it is found that the parties had the intention of being contractually bound and have acted on their agreement. Lord Kitchin considered that in the present case it would naturally be understood that payment would become due on completion and made from the proceeds of sale. Lord Briggs concurred observing that while lawyers often speak of the interpretation of contracts as if it is concerned exclusively with the words used expressly (as it often is) there are occasions, such as the present case, where the context in which the words are used tells you as much, or even more, about the essential terms of the bargain than the words themselves.

Given this there was no need for the judge to have implied a term into the agreement between Mr Devani and Mr Wells. However, Lord Kitchin was clear that had it been necessary, there would be no hesitation in holding that it was an implied term of the agreement that payment would fall due on completion of the purchase of the property by a person whom Mr Devani had introduced. The obligation to make payment of the commission on completion was required to give the agreement business efficacy and would not go beyond what was necessary for that purpose. There will be cases where an agreement is so vague and uncertain that it cannot be enforced. However, each case must be considered in light of its own particular circumstances.

It should be noted that, notwithstanding this decision, Lord Briggs was careful to stress that none of their observations about the common law in any way under-rated the importance of the statutory duty in EAA 1979, s 18. On the contrary, it is precisely because the common law will recognise an enforceable liability to pay as arising from the briefest and most informal exchange between the parties that statute protects consumers by imposing a more rigorous discipline upon their professional counterparties.

A 'welcome ruling'?

Nick Southworth believes that the judgment is 'very interesting' and 'a welcome ruling':

'[This] judgment introduces seemingly a potential discretion to deviate in cases where the facts and relationship clearly demonstrate that implying the term is an obvious step to give 'business efficacy' to an agreement. Given the earlier findings of fact that Mr Devani had identified himself both as an estate agent and the level of his commission, it certainly 'feels' right that the court could imply a term to complete the agreement given such a term would appear almost self-evident.'

Moreover, according to Tricia Hemans:

'This decision demonstrates that the courts will not imply terms into a contract without good cause and are reluctant to find that agreements are too vague or uncertain to be enforced. This suggests that parties in similar contractual disputes, particularly where not every term has been spelt out, could potentially argue first, for "the natural understanding" of the agreement to be applied on the basis of other agreed terms, and second for the implication of terms applying the principles set out in *Marks & Spencer plc v BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72, [2016] 4 All ER 441.'

Finally, Gary Blaker comments that:

'This seems to be a sensible and practical decision which prevents a party from relying upon the imprecise nature of words to wriggle out of a contractual obligation. The court looked at the words spoken within the context of the conduct of the parties and concluded that a sufficiently certain and complete contract was formed.'

Potential negative implications?

According to Hemans, however, 'this decision may create some difficulty for legal advisers in that judges might be tempted to impute an understanding to the parties which may not have existed at the time discussions about the terms of the agreement were actually carried out.'

Southworth points out that:

'This judgment does however need to be treated with caution, as while the judgment goes as far as to confirm that the court may imply terms into an agreement as it has done here, this is not to be taken as a consistent rule and as Lord Kitchen noted "each case must be considered in light of its own particular circumstances". Formation cases have always been open to a level of subjective interpretation, and while in this case this has certainly continued to be true, the evolution of the court's position will inevitably lead to further cases in due course exploring this discretion.'

Lessons for future

Peter Hall explains that:

'This case highlights that estate agents should always send their terms of business as soon as contact is made with a potential client, otherwise their fees may be reduced or even disallowed. It also shows that the wheels of justice can turn slowly. Only now has a final decision been made regarding fees on a transaction that completed in 2008. Moreover, the result is not what either Mr Wells or Mr Devani had sought. If they had been prepared to settle their dispute by mediation, it could have been resolved many years ago at much less cost to both of them.'

Blaker in turn believes that:

'While no guidance is provided, it would appear that in order for there to be a dismissal of a claim under the EAA 1979, the breaches would have to be far more serious and, in all likelihood, there would have to be findings of improper behaviour on the part of the estate agent.'

Source: Wells (Respondent) v Devani (Appellant)

Document information

Published Date
13 February 2019
Issue Date
13 February 2019
Issuing Department
Supreme Court
Jurisdiction
England; Northern Ireland; Scotland; Wales

Related Documents

Related Legislation
Estate Agents Act 1979