Meah v GE Money Home Finance Limited [2013] EWHC 20 (Ch)

A useful case for mortgagees on achieving the best price reasonably obtainable for a development property.

DCHJ Alan Steinfeld QC

William Hibbert appeared for the Defendant GE Money Home Finance Limited.

The case of *Meah v GE Money Home Finance Limited*, which concerned the duty of a mortgagee to use reasonable care to obtain the best price reasonably obtainable when exercising its power of sale, is significant for two reasons. First, it showed that the mortgagee can discharge its duty even though the estate agent's sales' procedure is seriously flawed so long as the evidence shows that no better priced could reasonably be achieved. Second, that a mortgagee does not have to carry out a "residual development assessment" even though there are no valid comparables by which to set the asking price.

The judge held that the mortgagee, GE Money, was not to be criticised for the way in which the marketing was carried out, but he made serious criticisms with regards to the marketing strategy employed by the estate agents engaged by it. The property went on the market at £185,000 and sold at £221,500. The Claimant's evidence was that its value was approximately £320,000. The judge criticised the fact that the property was put on the market at a significantly reduced price to "generate interest" and that the development potential of the property was not mentioned in the promotional material. Nevertheless, although the judge considered that GE Money had to take responsibility for failings of the estate agent (in the light of *Raja v Austin Gray* [2002] EWCA Civ 1965 and *Cuckmere Brick Co. v Mutual Finance Ltd* [1971] 1 Ch 949), fortunately the property was sufficiently exposed to the market for the judge to find that the best price reasonably obtainable was in fact achieved, as a sufficient number of developers had seen the property and a "bidding war" had developed among them.

Secondly, the judge found that there were no valid comparables for valuing this development property with a view to setting the price at which the property should go on the market. The Claimant's expert evidence was that a residual development assessment should have been carried out – which means calculating the amount the property as developed would sell for, deducting the costs of the development and the developer's profit, to reach a value which developers could be expected to pay. This assessment gave a value approximately £100,000 greater than the price achieved. The judge however found that to require such an assessment would place an unreasonable burden on the mortgagee, given the numerous assumptions and variables associated with such a valuation method, including the nature of the proposed development, the assumed cost, the time estimate for completion and the eventual selling price of the developed property. The residual development valuation method may be a useful tool for a developer buyer when considering offers that it might make, but is not a necessary step for a vendor who seeks to sell a development property. The notional value so calculated is not equivalent to the best price reasonably obtainable, as, unless more than one developer is willing to pay that price, it does not mean that in the market a developer will in fact pay that price.

William Hibbert
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