



The Specialist
Property Law
Regulator

WEBINAR

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Fraud, Breach of Trust and Breach of Warranty of Authority: Implications for Conveyancers

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Two High Profile Decisions

Hurry Narain Purrusing v (1) A'Court & Co (2) Houseowners
Conveyancers Ltd

P&P Property Ltd v (1) Owen White & Catlin LLP (2) Crownvent Ltd t/a
Winkworth

Conveyancing professionals and estate agents entangled in ID fraud by the “vendor” – purchasers suffering loss.

Who pays, who escapes, and why?

What lessons can the conveyancing profession learn?



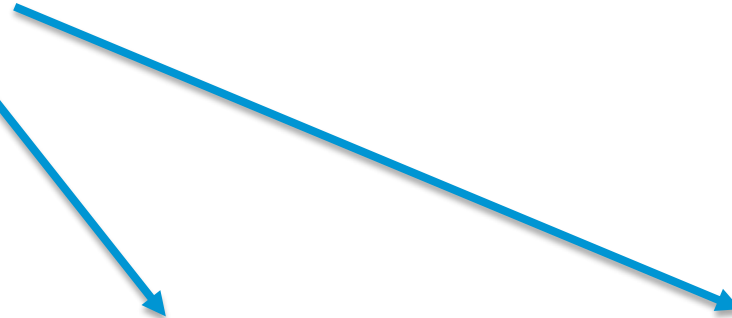
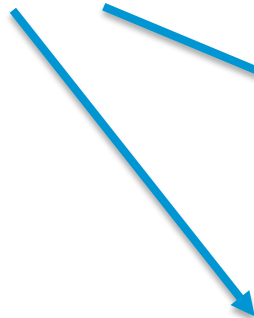
Purrusing

(Purchaser)

(Supposed vendor – **Imposter**)

Purrusing

“Nicholas Robert Dawson”



Houseowners Conv. Ltd

A'Court & Co

(Purchaser Convyocr.)

(Vendor Convyocr.)

Purrusing – Claims and Outcome

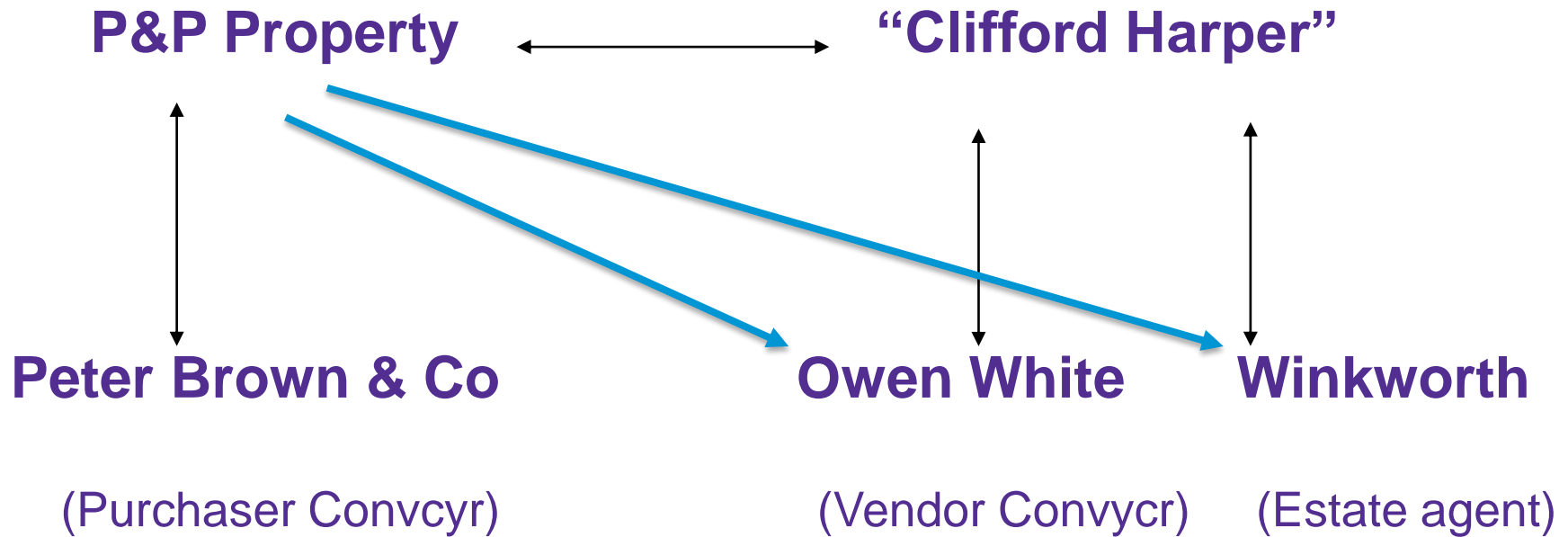
- A'Court and Houseowners (“HOC”) were in breach of trust
- Should A'Court or HOC be relieved from their breach of trust
- HOC was negligent in breach of its duties towards Mr Purrusing
- A'Court was in breach of warranty of authority



P&P Property Ltd

(Purchaser)

(Supposed vendor – **Imposter**)



P&P Property Ltd – Claims and Outcome

- Owen White (“OW”) was in breach of trust
- OW and Winkworth were negligent
- OW and Winkworth were in breach of warranty of authority
- OW was in breach of undertakings given around completion



P&P Property Ltd – However...

- Permission to appeal?



- So it could all change?



Different Outcomes – Why?

Breach of trust?

- **Purrusing** – A'Court as vendor's solicitors found to be a trustee; and breached because completion was not genuine (i.e. fraud)
- **P&P** – Later edition of the postal code for completion construed as not imposing a trust over the completion monies in the hands of OW as vendor's solicitors

Negligence?

- **Purrusing** – HOC was Mr P's own solicitor, but failed to act reasonably – chiefly in ref. to an enquiry it made which was not fully answered by the fraudster
- **P&P** – Winkworth and OW were on the “other side” of the transaction, and did not owe a duty of care to the buyer

Other Outcomes – Why?

Breach of warranty of authority?

- **Purrusing** – Point abandoned by Claimant just before trial
- **P&P** – Court found that nothing said by OW or Winkworth amounted to a promise that they knew their client was the genuine owner

Breach of Undertaking?

- **P&P** – The parts of the postal code for completion that P&P relied on did not in fact constitute undertakings by OW

Prominent Themes for Discussion

- **Client ID Checks, Enhanced Due Diligence & the Risk-Based Approach**
- **Enquiries, Replies and Statements about your Client**
- **Dealing with 3rd Parties (e.g. estate agents)**
- **Training, Record Keeping & the Need for a Good File**

Client ID Checks, EDD & the “Risk-Based Approach”

- **Judges:** “*exemplary professional care and efficiency*” “*careful conscientious and thorough*” Not perfection – but any departure from normal good practice will be hard to justify
- **Starting point** – is framework of responsibilities under MLR 2007, POCA 2002, the CLC AML Guidance, Law Society Conveyancing Handbook, Law Society Property & Registration Fraud Practice Note, etc.
- **MLR Reg 7** – “*Customer Due Diligence*” **MLR Reg 5 (a)** – “*identifying the customer and verifying the customer’s identity on the basis of documents, data or information obtained from a reliable and independent source*”
- **MLR Reg 5(c)** – “*obtaining information on the purpose and intended nature of the business relationship*”.
- **MLR Reg 14 (1)** – “*A Relevant Person must apply on a risk-sensitive basis enhanced due diligence*”

Client ID Checks, EDD & the “Risk-Based Approach”

- CLC AML Guidance / Law Society P&RF Practice Note – Warning Signs



Client ID Checks, EDD & the “Risk-Based Approach”

- **Consider a “Risk Factors” Checklist** ~ Are there multiple warning signs? Is this transaction carrying more than normal risk?
- **What does EDD require** ~ ID checks not mechanistic/formal. Understand why the client is giving you the instructions that they are
- **Be inquisitive** ~ Fraudsters rely on an “unquestioning” attitude for fraud to succeed. Why have you been instructed? Proof of employment?
- **Email only contact** ~ A real challenge and a real problem. Establish the link to the property
- **Speed of sale** ~ A regular feature in the cases. Why the urgency? Clients should not be evasive
- **Ongoing vigilance** ~ The Court will expect you to notice flags in documents. Borderline detective work if the risks should be clear



Enquiries, Replies and statements about your Client

- **Making** vs **responding to** enquiries: Different considerations apply
- **A misconception** ~ Note Purrusing did **not** hold that questions either should or should not be asked about the other side's ID checks. Finding was just that if you ask, you must closely analyse the reply
- **Scrutinise the response** ~ Cardinal Rule is if you pose a question you have a duty to review the reply carefully. Is it a full answer?
- **Report to the Client** ~ If not full report it to the client in a clear and intelligible way.
- **Further enquiries** ~ If you need to go back for more information, so be it. The law expects this of you
- **A fraud prevention measure** ~ see the prior sale in Purrusing – fraudster balked at providing info about employment
- **Should you ask about ID checks?**~ This is for regulators to decide

Enquiries, Replies and statements about your Client

- **Responding to** enquiries:
- **Avoid promises** ~ (warranties) about your client being the “true” owner or guaranteeing who they are
- **Post P&P** ~ the scope for *implied* promises from correspondence/circumstances looks very limited
- **Questions about ID checks you have done** ~ First step is to seek client instructions. If the client does not want you to engage, why?
- **Answer factually** ~ list what you have done
- **Disclaimers??** ~ Probably overkill, especially after P&P

Dealing with 3rd Parties (e.g. estate agents)

- **Estate agent co-defendant** ~ P&P unusual. No duty of care so no claim. But held not to have done ID checks / AML properly. Common failing?
- **Do not rely on others' ID checks** ~ This was a message from P&P. Agent sought to rely on convycr checks. Not good enough – non-delegable AML obligations
- **Check who the 3Ps you deal with are** ~ Well established practice of checking your opposite number online. This extends to others: P&P, criticised for failing to check out the notarising party on certified documents (Google would have shown not a lawyer). Another aspect of being inquisitive.
- **3Ps are allies in preventing fraud** ~ Agents can help build a picture of a transaction and a client. Why did the client instruct that agent? Is s/he known to them? This can help with EDD

Training, Record Keeping & the Need for a Good File

- **Training** ~ Ensure fee-earners receive proper training to recognise risks and know how to look at the transaction available.
- **Systems** ~ Consider whether case management systems/ supervision processes need to be changed? Beware the standard form – mechanistic/tick box systems are dangerous
- **Inquisitive mindset** ~ Remind fee-earners to scrutinise answers to questions raised on all aspects of transaction and ensure fully reported to client
- **Build the File** ~ Log the risk factors you identify (e.g. risk factors checklist) and critically the steps you take to address them
- **Notes** ~ Attendance notes and records matter. We know it's a challenge in practice. But record keeping wins cases.

What is the Central Message?

- **Tensions exist – commercial imperatives vs ideal legal thoroughness.**
- **Times have changed**
- **Profession must move with the times**
- **Conveyancers – and their clients – must adopt and be prepared for more scrutiny and questions about their conveyancing transactions**
- **Honest clients should not mind**

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Thank you – Questions?

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