



No place like home...

Cases here & across the pond have raised questions around failure to disclose alleged paranormal activity in property sales, as Mark Pawlowski explains

As we know, the rule of caveat emptor, ie let the buyer beware, places the burden squarely on the purchaser to act prudently in finding out about the fitness and value of the property they are seeking to buy. There are, of course, exceptions involving latent defects in title and active concealment of physical defects, as well as positive misrepresentations in respect of the property. Significantly, the American courts have gone further and been prepared to create a new exception to the rule where a state of affairs exists which materially impairs the value of the property and is peculiarly within the vendor's knowledge or unlikely to be discovered by a prudent purchaser exercising due care in making enquiries. In one case, this principle was applied to render a vendor liable in damages for failing to disclose the fact that the house was allegedly the site of poltergeist activity.

American poltergeists

The point was considered by the New York State Supreme Court, Appellate Division, in the unusual case of *Stambovsky v Ackley* (see [1992] Conv. 8-15). In this case, the purchaser discovered that the house he had recently bought from the vendor was widely reputed to be possessed by poltergeists. The defendant had apparently seen the ghosts on numerous occasions over the previous nine years and had actually reported the events to the *Reader's Digest* and to the local newspaper. The purchaser, being a resident of New York, was not aware of the property's reputation in the locality. Following the purchase, however, he was told of the problem and promptly brought an action for rescission of the contract of

sale. Justice Israel Rubín (who gave the majority judgment) held that the purchaser was entitled to his remedy.

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The initial practical problem facing the purchaser was proving the actual existence of paranormal phenomena in the house. The judge, however, was able to avoid this problem by relying on the vendor's conduct in publicly reporting the paranormal activity to a local (and national) publication as establishing an estoppel which prevented her from denying the existence of the phenomena. Accordingly, the house was, as a matter of law, haunted! The second difficulty facing the purchaser was the caveat emptor rule, which applied to the State of New York. On this point, Justice Rubín was mindful to point out that a prospective purchaser would be highly unlikely to discover the existence of paranormal activity prior to purchase of the property:

‘the notion that a haunting is a condition which can and should be ascertained upon reasonable inspection of the premises is a hobgoblin which should be exorcised from the body of legal precedent and laid quietly to rest’

In this view, the caveat emptor rule was not an all-embracing rule as to render every act of non-disclosure immune from legal

redress. Where a condition which has been created by the seller materially impairs the value of the contract and is peculiarly within their knowledge or unlikely to be discovered by a prudent purchaser exercising due care, non-disclosure constituted a basis for rescission as a matter of equity.

English poltergeists

In England, there has been (so far as the writer is aware) only one decision involving a sale of property subject to an alleged poltergeist. In 1999, Mr and Mrs Smith brought an action in the Derby County Court seeking rescission of a contract for sale alleging that the previous owner had failed to disclose the property's alleged paranormal history. The couple, who had paid £41,000 for a cottage in Upper Mayfield, Derbyshire, claimed that, after moving in, they became aware of an ‘evil presence’ in the house. Mrs Smith testified that she had witnessed a number of strange things, including visions of a little boy with piggy eyes, weeping walls, objects being moved and strange sounds. She also alleged that, on one occasion, she felt as though she had been raped by a ghost. The basis of the couple's claim was that the property had a bad reputation locally and this was something that they should have been told about prior to the purchase. Not surprisingly, Judge Peter Stretton dismissed the Smiths' claim, describing their stories as ‘hysterical reactions’. He concluded that there was no acceptable evidence that the house had ever been subject to supernatural visitation and so there was no legal basis for their claim for rescission of the sale.

Caveat emptor prevails

In *Sykes v Taylor-Rose* [2004] EWCA Civ 299, involving the sale of a house in Wakefield, Yorkshire, which had been the subject of a gruesome murder, at first instance Judge Langan KC was not prepared to take ‘the great leap forward’ of creating a new exception to the caveat emptor rule. Moreover, the Court of Appeal concluded that the vendors had not made a misrepresentation or negligent misstatement in answering ‘no’ to a question in the property information form asking them whether there was ‘any other information which you think the buyer might have a right to know’. The position under English law, therefore, remains that a vendor is under no obligation to disclose defects which might affect the value of the land unless the seller's conduct constitutes active concealment or a positive misrepresentation. **NLJ**

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