

Conditional contracts: it's all in a date...

If completion of a contract is predicated on satisfaction of a 'pre completion' condition, does failure to comply with that condition prior to the contractual completion date amount to a breach of contract or simply delay completion?

The answer lies in the wording of the contract and the recent case of *British Overseas Bank Nominees Limited - v- Analytical Properties Ltd* [2015] EWCA Civ 43 serves as a useful reminder that careful thought about the practical effects of drafting is essential to avoid dispute.

The problem - failure to deliver by the contractual completion date

On 13 December 2013 Analytical Properties Limited (the Seller) exchanged contracts to sell a shopping centre in Windsor, known as King Edward Court, to British Overseas Bank Nominees Limited (the Buyer). The agreed completion date was 17 December 2013.

Completion of the contract was conditional on the Seller procuring the issue of emergency lighting certificates for the centre to demonstrate that the lighting had been tested and found to be in good working order 'as soon as practicable and in any event prior to the date of actual completion'.

Although the Seller had commissioned the certificates, it failed to procure their issue on the agreed completion date and so completion was delayed until 17 January 2014.

Because the condition was for the sole benefit of the Buyer, it could have been waived. However, the production of the certificates was a safety issue, resolution of which was of key concern to the Buyer.

The Buyer therefore issued proceedings for breach of contract claiming that the contract obliged the Seller to issue the certificates prior to 17 December 2013, regardless of whether this was practicable.

The Buyer was not seeking to rescind the contract. Instead it was seeking damages for breach of contract arising out of the delayed completion.

It was demonstrated during the case that the Seller had acted as soon as practicable in commissioning the certificates and so the dispute centred around whether the contract obliged the Seller to issue the certificates by the anticipated completion date of 17 December.

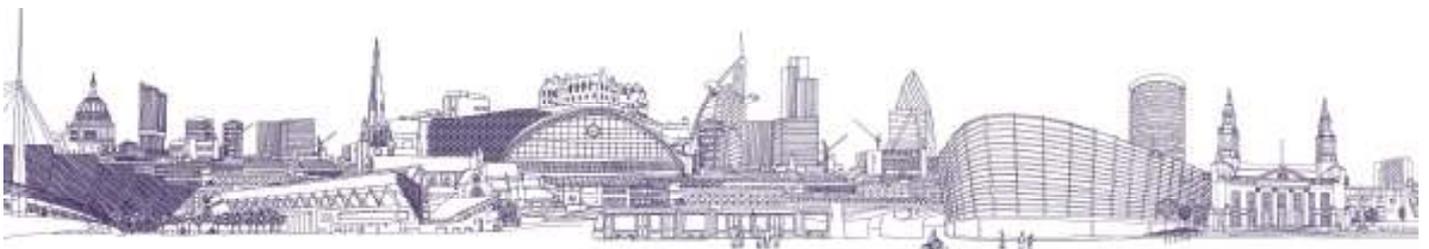
Compliance by the completion date, or actual completion - what did the court say?

At first instance, the judge agreed with the Buyer that failing to issue the certificates prior to the agreed completion date of 17 December 2013 did not postpone the obligation to complete the sale and so failing to complete on that day had amounted to a breach of contract on the part of Seller.

However, the Court of Appeal overturned that decision. It held that the obligation to obtain the certificates prior to 'actual completion' did not necessarily mean that the Seller had to do so prior to the agreed completion date of 17 December 2013.

The Court of Appeal's reasoning was that 'actual completion' was defined in the contract as '*actual completion of the sale and purchase of the property whether or not it occurs on the completion date*' therefore the Seller's obligation was to provide the certificates before completion of the contract, which did not necessarily have to occur on 17 December 2013. Therefore, its failure to do so on 17 December 2013 didn't amount to a breach of contract - it merely postponed the date completion took place.

If the contract had obliged the Seller to procure the certificates on or before a fixed date rather than actual completion, the Court of Appeal's decision may have been different.



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Timing is everything

The moral of this case is that the contract must be absolutely clear as to the timings around satisfaction of a contractual condition. This will affect when completion will take place and whether failure to comply with that condition within the anticipated timeframe amounts to a breach of contract.

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