



## A SOLICITOR COVER UP BUT “NO DISHONESTY”

A solicitor caught up in a fraudulent property transaction was cleared of dishonesty despite breaching the Money Laundering Regulations 2007 and subsequently trying to cover the matter up.



The case of *Pemberton Greenish LLP v Henry* [2017] concerned a claim brought by a firm of solicitors against one of its employed consultant solicitors.

The consultant solicitor had unwittingly enabled a fraudulent property transaction whilst acting for one of the clients of Pemberton Greenish LLP. When the fraud came to light, the solicitor, upon reviewing her file, realised that she had not received the written authorisation permitting her to complete the property transaction. She therefore decided to forge the client's signatures and also deleted a number of emails created during the transaction.

Pemberton Greenish discovered what had happened and reported the solicitor to the Solicitors Regulation Authority and to the police. Following the police investigation,

the solicitor accepted a caution for an offence under the Forgery and Counterfeiting Act 1981. The Solicitors Regulation Authority then commenced disciplinary proceedings against the solicitor.

At the disciplinary hearing, the Solicitors Regulation Authority found that the solicitor had been dishonest and ordered that she be struck off the Roll of Solicitors.

Pemberton Greenish then commenced proceedings against the solicitor in order to recover compensation from the solicitor. The claim was unsuccessful on the basis that prior to the detection of the fraud, the solicitor had had no reason to be suspicious about either the nature of the transaction or the circumstances giving rise to it. The dishonesty came after the

original fraud. It was the fraud that gave rise to the losses, not the subsequent attempt at a cover up by the solicitor. The dishonesty was a good basis for striking the solicitor off the Roll of Solicitors but there was no evidence that the solicitor was a knowing participant in the fraud and therefore responsible for the losses suffered by the firm.

This was an unusual case where criminal, civil and regulatory issues converged. Despite being penalised on the criminal and regulatory fronts, the solicitor managed to wriggle free of liability on the civil front.

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## INTERNATIONAL PERSPECTIVE: TURKISH DELIGHT – YOU GET WHAT YOU PAY FOR

A note recently issued by the Turkish Government has confirmed that foreigners who buy property worth at least \$1 million can obtain Turkish citizenship. The note confirms that citizenship will also be offered to foreigners who deposit a minimum of \$3 million in Turkish banks on the condition that they do not withdraw it for 3 years.

Foreign investment in real estate is on the decline in Turkey due largely to security concerns. Russians, Kuwaitis, Saudis, and Iraqis are the biggest investors and it remains to be seen whether the “carrot” of citizenship will be enough to halt the decline.



## BUSINESS RATES AND COMMON SENSE

Liability for business rates where a commercial property is undergoing substantial refurbishment



The issue that arose in the case of *Newbiggin (Valuation Officer) v S J & J Monk* was whether a property can be deleted from a rating list whilst significant building works are being carried out.

In this case, an office building in Sunderland was undergoing works that involved stripping the units back to a shell prior to creating three new office suites. The rate payer argued that the property should be deleted from the rating list whilst these works were ongoing. The rate payer's argument was, in summary, that the property was incapable of occupation and should not therefore be subject to any rates liability. The Valuation Officer disagreed and contended that the works that were being carried out to the property were

"economic works", that is to say that the Valuation Officer was entitled to value the property based on an assumption that the property was in a reasonable state of repair and notwithstanding the ongoing development works.

Initially, the Valuation Tribunal found in favour of the Valuation Officer. The rate payer appealed the decision to the Upper Tribunal and the Upper Tribunal agreed with the rate payer. This decision was subsequently overturned by the Court of Appeal. The rate payer persisted and appealed to the Supreme Court and the Supreme Court unanimously allowed the rate payer's appeal.

The consequence of this important decision and the refreshingly pragmatic clarification

of the law is that buildings that are undergoing significant refurbishment or development will now not be liable for rates liability whilst these works are continuing. The test in any given case is whether the property is capable of material occupation or not.

*Newbiggin* is a welcome decision which accords with commercial common sense. Developers will be relieved that their rates liability will be reduced whilst their premises are being developed.

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## YOUR QUESTIONS ANSWERED

**Q** A debtor owes both me and another creditor jointly, an unpaid debt. I have discussed taking court action against this debtor with my fellow creditor but he is unwilling to go down that particular route. Am I entitled to go it alone?

**A** The other creditor should join you as a Claimant in the proceedings against this debtor. If he is unwilling to be a Claimant, he must be named as a Defendant to the action. This slightly counterintuitive position is dealt with in the Civil Procedure Rules at CPR19.3.

**Q** As a landlord of commercial premises, I am about to initiate a rent review process. Market rents have dropped in this area and I am a little concerned about the outcome of the review. The wording of the rent review provisions is a little ambiguous but I have been told that in the case of any ambiguity, there is an assumption that a review will be upwards only. Is that correct?

**A** This is not correct. There is no assumption of an upwards only progression. Interpreting the rent review provisions will involve the same process

that one adopts when interpreting any written contract. That will, in part, involve identifying the intention of the original contracting parties. There is a wealth of case law in this area including the recent Supreme Court decision in *Arnold v Britton* and you should take advice before triggering the review.

**Q** I recently served a notice on my tenant and delivered it to the tenant by hand to make sure that he received it. The tenant grabbed the notice from my hand which was contained in an envelope, screwed it up and threw it in the bin before I could explain what it was. The tenant then became threatening and so I was forced to leave the property. As far as I am concerned, I have served the notice and the clock is now ticking. Is that correct?

**A** The situation is not quite as black and white as that. If your tenancy agreement specifies what constitutes valid service, then that contractual provision takes precedence. It may be that the tenancy simply requires you to deliver the notice to the property. If that is the case,

you have complied with the contractual obligations and you have effected valid service. If however the tenancy agreement is silent in relation to the service of notices, I think you could potentially face an argument that you were put on notice by the tenant that he did not read the notice and did not know what was contained in the envelope. Clearly, it was difficult for you to explain the position to the tenant but I think it would be prudent to arrange for the notice to be re-served and this time to provide the tenant with a brief verbal explanation of what is in the envelope so that the tenant cannot argue at a later date that "had he known what was in the envelope, he would have acted differently". Clearly, it might be wise to instruct a process server to deal with the re-service of the notice.

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## PROFESSIONAL IN THE HOT SEAT

We caught up with Jonathan Rathbone, Hughes Paddison's new Director tasked with growing the Company and Commercial Department. Jon joins Hughes Paddison from international law firm, DAC Beachcroft, bringing with him more than 14 years' experience.



### Why the move to Cheltenham?

*We have been living in the countryside for the last 10 years and wanted to move back into a town as our kids will soon be teenagers. Cheltenham seems to have it all - great schools, nice bars and restaurants and a friendly but active business community. It certainly beats Bristol, where I started my career.*

### In a nutshell, what type of work do you specialise in?

*I help people buy and sell businesses and anything to do with owning or investing in companies. I also advise people on all commercial agreements, whether that be their general terms and conditions or bespoke agreements for buying or selling complex technology or equipment or outsourced services.*

### Rumour has it that you are a bit of an entrepreneur. Any substance to these rumours?

*I designed an innovative child's potty back in 2009 and we now sell children's products to the likes of John Lewis, Boots and Amazon. The potty is one of the bestselling potties in the UK and we also sell our products in Germany, China, Japan and the USA. My wife runs the business full time, but I stay involved with some of the key relationships and strategic decisions.*

### If you were given an opportunity to have a pub lock-in with any stars, fictional characters, villains, celebrities, or losers of your choosing – alive or dead- who would you pick?

*That's a tricky one. I have to admit that I am a big fan of David Mitchell and Lee Mack for comedy and I hear Lee Mack is quite good with the darts. If I am allowed another, some music from Adele would round things off nicely.*

### Having just nailed your dream job at Hughes Paddison, it might be difficult to consider other dreams but what would your dream job entail if it were not to involve the law or other business activities?

*I love trying out new activities or experiences with friends or family, especially if there is an element of adrenaline involved. My dream would be to run a hotel in the mountains with a lake, where we would offer lots of ridiculous sports and activities during the day and fine wine and food in the evening. I am not sure it would be particularly good for my longevity though.*

### Brexit – nightmare or opportunity?

*I like to find opportunity where I can, but I think in the short term it is going to be a bit of a nightmare. In the long term, I think as a nation we are hard working and innovative*

*and so that should see us coming through this in good shape. Personally, Brexit has been a bit of a nightmare for the potty business largely due to the depreciation of GBP against USD as we buy in USD from China.*

*As a result, we have now moved half of the manufacturing from China to Droitwich, which must be a good thing. However, it's going to make more than a few potties in Droitwich to counter the troubles ahead for the financial services sector in the City.*



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