

Case study

Buying a holiday home is not all about buckets and spades

Background

Andrew and Ben* decided to buy a holiday home that was being built in a tourist hotspot. The Agreement for Sale and Purchase allowed them 10 days to undertake due diligence and finance before confirming the purchase. During this period, they engaged a mortgage broker as well as an accountant and a lawyer. Each of the three advisors were sent information about the property and the couple's intention to live there part-time along with renting it out at other times.

The Agreement for Sale and Purchase contained a clause which limited its use to short-term visitor accommodation. This important clause changed it from being a residential property to a commercial one and it was missed by Andrew and Ben, as well as their mortgage broker, lawyer and accountant. Everyone knew that the couple intended to live in the property themselves at least some of the time.

The mortgage broker obtained residential finance and so Andrew and Ben duly confirmed the purchase. The true classification of the property was eventually discovered by the valuer after the purchase had been confirmed and the deposit paid.

When the lender learned of the correct zoning classification of the property, they changed the terms of the proposed lending from residential to commercial resulting in a significantly higher interest rate. As a result, the couple withdrew from the property purchase and lost their deposit along with extra costs they had incurred during the build.

Next steps

Andrew and Ben contacted FDRS to raise a dispute about their mortgage broker. The parties were unable to reach an agreement together and so it proceeded to adjudication, where we make an independent decision on the matter.

Outcome

FDRS considered the broker's obligations to Andrew and Ben. In particular, her legal duties of care, competence, diligence, knowledge and skill. It was determined that, in missing the fact that the zoning of the property would not allow Andrew and Ben to use it as she knew they wished, the broker had breached these obligations.

The adjudicator then turned their attention to contribution – whether there were factors which mitigated the extent of responsibility owed by the broker. In this case there were contributing factors which should have protected Andrew and Ben - in particular that they were experienced property owners who were professionally advised by both a lawyer and an accountant.

After considerable analysis it was determined that the broker was responsible for one third of Andrew and Ben's lost deposit, one third of the additional costs they had paid to fit out the property while under construction and also liable to pay \$3,000 to the couple as a contribution towards their legal costs.

Lessons learned

This complaint highlights the integrated reliance that service providers have on each other. Andrew and Ben may also have claims against other professionals involved in this matter, and if so, these will be pursued through other dispute resolution processes.

This complaint also shows the responsibility that customers, who are capable of doing so, have to protect themselves – that they cannot absolve themselves of all responsibility simply because they engaged with professional service providers.

** Names have been changed to protect our customers' identities*