



LITIGATION AND DISPUTE RESOLUTION

Estate Agent Not Liable for Inaccuracies in a Brochure: A Landmark Supreme Court Decision

by **Shane Neville**

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A property developer who relied on an estate agent's sales brochure has had his award of €350,000 in damages for negligent misstatement overturned by the Supreme Court by a 3:2 majority.

Background

In 2007, the High Court awarded €350,000 in damages to Mr David Walsh for negligent misstatement arising from information contained in a sales brochure produced by Jones Lang LaSalle (JLL) on behalf of the seller of a property.

JLL appealed the finding to the Supreme Court.

Negligent Misstatement

Negligent misstatement relates to a representation of fact, which is inaccurately made, and is relied on by another party to its disadvantage.

Supreme Court Judgment

In its appeal, JLL argued that the disclaimer at the foot of the brochure should relieve JLL of liability. The brochure contained the following disclaimer:

Whilst every care has been taken in the preparation of these particulars, and they are believed to be correct, they are not warranted and intending purchasers / lessees should satisfy themselves as to the correctness of information given.

The Supreme Court analysed the law of negligent misstatement and considered to what extent that a disclaimer of responsibility absolved a supplier of information from liability for economic loss incurred by a recipient of that information.

The issue to be determined was whether the existence of the disclaimer had the effect that there was no assumption of responsibility for the task of furnishing correct information on the part of the estate agent (JLL). If there was no assumption of responsibility, a duty of care was not owed to the recipient and no liability could attach to the estate agent.

Ms Justice Laffoy found that the disclaimer was "clear and unambiguous as to non-assumption of responsibility by JLL" and that the consequence of this was that the law imposed no duty of care on JLL in favour of prospective purchasers. It was held that JLL could not have been said to have assumed the risk and so JLL's appeal was allowed.

Conclusion

This is a very significant development in the law of negligent misstatement in Ireland.

It imposes an obligation on prospective purchasers to carry out their own enquiries to satisfy themselves as to the correctness of information contained within sales brochures or marketing material.

This judgment does not automatically absolve estate agents or other professions from liability for negligent misstatement. Anyone seeking to rely on a disclaimer should ensure it is worded appropriately and is included in sales brochure or marketing material to minimise the chances of being found liable in respect of the provision of incorrect information.

A link to the judgment can be found [here](#).

For more information, please contact a member of our Litigation & Dispute Resolution department.

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