

Case Law Spotlight

Chartbrook Ltd v Persimmon Homes [2009] 3 WLR 267.

This House of Lords case explored the extent to which pre-contractual negotiations between parties may be used as an aid to constructing the contract between them. The claimant company was a land developer who entered into a deal with the defendants whereby they would be entitled to a share of the uplift of the value of land sold in the event that planning permission was obtained. An additional residential payment became due but the claimant company calculated the value in terms of a clause in the missives at £4,484,862, whereas the defendants were only willing to pay £897,051. In defending the claim, the defendants sought to rely on pre-contractual negotiations which they said supported their interpretation of the contract. The claimants were successful in the English Court of Appeal, but before the House of Lords, that decision was overturned. In this highly important case, their Lordships held that whilst there is a general rule that pre-contractual negotiations are not admissible as evidence as to the meaning of a contract, nonetheless in this case, it was relevant to ascertain the mutual intentions of the parties to the contract. Accordingly, this decision represents a radical liberalisation of the previous position regarding contracts that have been reduced to writing. Some academic writers have alleged that the decision effectively gives the courts free rein to re-write contracts that have been agreed between parties and committed to writing by lawyers. That case was followed in a ruling of the commercial court in the Court of Session last week, where Lord Glennie found that despite the clear wording of the contract itself, it was permissible to look behind the words used and to consider the extent of negotiations which preceded the missives which were subsequently reduced to writing with the agreement of very experienced commercial lawyers acting on both sides (*Forth Property Developments Ltd v FM Western Harbour* (unreported judgment of 3 September 2009)). The extent to which parties to a contract may simply rely upon the black and white letters on the page is now open to question in cases where there has been extensive pre-contractual negotiation.

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