



Protecting your care home purchase from competition – Restrictive Covenants

A recent case serves as a reminder to both clients and their solicitors to always consider restraint of competition clauses in contracts where there is a local business with goodwill, which obviously includes care homes.

In the case of *Luffeorm LTD v. Kütsons LLP* [2015] a pub was being purchased, and the purchase price was mainly for the goodwill of the business with a nominal sum paid for lease, fixtures and fittings. Two months after the purchase was completed, one of the sellers took over another pub three miles away and many of the clientele moved to that pub. The purchaser argued that the solicitor should have advised him on the commercial risks and insisted that the contract contain a covenant restraining the sellers from operating a competing pub.

Generally, a solicitor has no duty to advise on inherent commercial risks in any transactions. However, in this case the court held that the solicitor was negligent in failing to draw the client's attention to the absence of a restraint of trade covenant, which is usual in pub transactions. Ultimately, however, the buyer's claim failed because the court was persuaded that even if the buyer had been aware of the risks and the lack of restraint of trade clause, the buyer would still have purchased the pub.

This case serves as a reminder to all prospective purchasers of local businesses to fully inform themselves as to the commercial risk and to think about what restrictions they may wish to impose on the seller.

In many care home transactions, the purchase price also contains a significant amount for goodwill and therefore although a solicitor would not advise on commercial risk, it would be prudent to ensure that the contract contains a covenant restraining the sellers from operating a competing care home within a certain mileage for a certain number of years.

This has always been the practice at Adams & Remers when negotiating contracts and this recent case has only served to reinforce our view that it is essential for both our clients (and our own!) protection.

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This article is not intended to be a full summary of the law and advice should be sought on all issues.

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