

Buyers beware-er?

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In an interesting judgment published yesterday (Mackie v Scott [2017]JRC179), the Master of the Royal Court brought forward a determination on the point around whether the standard terms of contracts of sale, which are routinely passed before the Royal Court means that, even if a seller makes false representations about a property to the buyer before the purchase, the seller will have no liability for making them.

In this case, the buyer sued the seller for around £1.5million in damages, claiming that she had bought relying on misrepresentations made by the seller about the state of the property. In her defence, the seller claimed that the standard terms of the contract meant that the buyer took the property in the state that she found it and with all its defects, whether or not they were hidden and whether or not the buyer had made untrue representations about them.

The standard terms, which spell out that a purchaser takes the property as he/she finds it and with all its apparent or hidden defects, have been routinely in use by parties to property transactions since the mid-eighties. They were adopted by property lawyers at that time because of a perceived lack of clarity over whether wording used up to that point absolved the seller of liability for hidden defects.

In his judgment ordering a trial of the issue, the Master acknowledged a continuing lack of clarity over whether the wording in use since the eighties absolved the seller even if the seller makes false representations about defects. One might be forgiven for noting an irony in this situation, given the attempts in the mid-eighties to clear things up. Hopefully the imminent further judicial consideration will bring about clarity and certainty for buyers and sellers alike.

The judgment is accessible [here](#).

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