

EWAN PATON SUCCESSFULLY OPPOSES WILD DUCK



**Wild Duck Ltd v (1) Dean Paul Smith (2) Lucy Jane Smith (3) Leanne Smith
[2017] EWHC 1252 (Ch)**

Ewan Paton successfully appeared on behalf of the Defendants in a breach of contract and tort dispute concerning leases granted to the Claimant by the Defendants' late father. The Defendants' late father owned a large area of land on which he intended to build 40 holiday homes. Each purchaser of a holiday home was to become a leaseholder of the relevant plot and a shareholder in the management company. The Claimant purchased 5 plots prior to the Defendants' father's death. On his death, he was succeeded by the Defendants.

Financial difficulties experienced by the developer of the plot halted works prematurely; 24 of 40 homes had been built, the access ways across the plot were incomplete and the site lacked a permanent sewage disposal system. The developer was liquidated, triggering a liability on the part of the management company under the lease to complete the outstanding works. If the management company failed to do so the lease also provided that a lessor could carry out the works and seek the cost from the management company. After several years it was agreed that the First Defendant would complete the sewage works. A third party was appointed in respect of the remaining works.

The Claimant contended that:

1. there were implied terms in the leases that the Defendants should not prevent the management company from performing its obligations under the lease and should co-operate in said performance;
2. the Defendants (through the First Defendant) had prevented the management company from complying with its obligation to carry out the outstanding works;
3. alternatively, the Defendants had breached their duty not to interfere with the management company's obligation to complete the works;
4. the Defendants were in breach of a covenant not to cause nuisance or annoyance by virtue of the presence of unfinished units and fencing near to the Claimant's properties.

The Claimant was successful in establishing that there was an implied term that the Defendants should not prevent the management company from performing its obligations under the lease, but not that there was an implied term of co-operation in respect of the same. On the facts, the Defendants had not prevented the management company from performing its obligations and therefore had not breached the aforementioned implied term. The Claimant had accepted, albeit with reservations, the Defendants' invocation of the right to complete the sewage works. Whilst there were delays, the management company had not breached its obligation to complete the outstanding works. Finally, neither the unfinished units nor the fencing constituted a nuisance.