

PROPERTY COMMENTARY – SEPTEMBER 2012**Sorry Boris - Give me Samba in Rio any day!**

Dig deep enough in any dispute and you will find that there is one primary issue of difference which drives that dispute. There may be peripheral matters but, home in on the primary one and more often than not, you will see the solution. Why? Because in every dispute you need to get answers to 4 questions – What was meant to happen; what did happen; why and what were the consequences.

This was illustrated recently in a Court case - *Ampurios NU Homes Holdings Limited –v- Telford Homes (Creekside) Limited (2012)*. I am indebted to Louise Carver of Withy King Solicitors for bringing this case to my attention. The Case found that a developer was in breach of Contract. They were ordered to return the deposit plus interest to the buyer after delays in the development programme passed the Contract due date. Why?

A typical development sale agreement will have a developer contracting to proceed diligently with the construction of a new build scheme. They must use reasonable endeavours to complete by an agreed date. In this economic climate developers run a risk if their scheme does not get off the ground and completed as anticipated, of being sued by the party with whom they have contracted for reimbursement of the sums expended on account of the scheme. In a worst case scenario for the developer the buyer would succeed in securing an additional payout to reflect the financial position it would have been had the development succeeded.

Like most disputes there was lots of toing and froing – the buyer sued for misrepresentation; the developer countersued because the agreement to buy called for staged payments and they were not made. Digging deeply into this Court case there was one fundamental issue which brought these parties to Court and that was, the developer did not have sufficient secure funding to progress the scheme. As a result, the buyer was able to terminate the Contract and got a return of deposit plus interest.

So when you undertake the autopsy on this one you realise that the delay was not so much the recession but the developer not having proper funding in place. The solution is clearly for the developer not to proceed until they have proper funding or for the Contract to be effective only upon funding approval.

This, of course, comes down to where do you get the money? In my last newsletter I talked about the availability of funds. Money is out there. Banks are lending. Their product is called money. They have to sell it. Otherwise they are not going to make a profit. The message again this time is, provided your development makes sense and, yes, there are Banks lending on property, then there is every reason to believe that you will be able to get funding.

I cannot close this newsletter without commenting on the Olympics. What an amazing celebration of excellence. You have to applaud the athletes. Putting aside for one moment the fact that Team GB were third in the medal table (let's not talk about New Zealand!) you have to admire the achievement of Usain Bolt. Some of the stories which came through were staggering. One was an American athlete who broke his leg at the 200 metre mark in the 4 x 400 metre relay and continued to run to pass over the baton. Team GB performed magnificently. Big congratulations from DeVarga to all of those participants. Dare I say it - congratulations Sir Mo, Sir Bradley and Dame Jessica.

A special mention has to be made of Lord Coe. I know he had tens of thousands of people in the background working to make it a great celebration of sport but he was the driving force; he had the vision. London has certainly thrown down the gauntlet to Rio. Being an avid fan of Strictly Come Dancing I cannot wait to see the Samba dancers in the opening ceremony in 2016. That has got to be better than seeing Boris dancing to the Spice Girls!

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In December 2011 we talked about our website which was then under construction. It is – finally – live!