



Claim Form

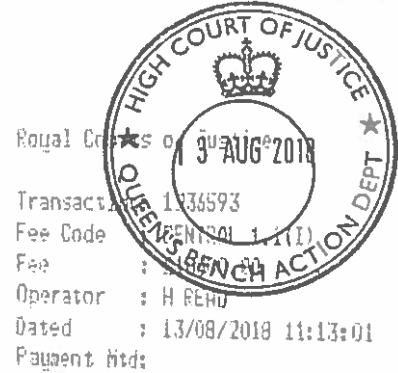
In the High Court of Justice Queen's Bench Division Royal Courts of Justice	
Fee Account no.	
Help with Fees - Ref. no. (if applicable)	H W F - [] [] - [] []

You may be able to issue your claim online which may save time and money. Go to www.moneyclaim.gov.uk to find out more.

Claim no.	HQ18X02894
Issue date	13 AUG 2018

Claimant(s) name(s) and address(es) including postcode

- (1) TARAY INVESTMENTS LIMITED
CANADA HOUSE
ST LEONARDS ROAD
KENT, ME16 0LS
- (2) BELLEVUE HOMES LIMITED
677 HIGH ROAD
FINCHLEY
LONDON, N12 0DA



Defendant(s) name and address(es) including postcode

GATELEY HERITAGE LLP
ONE ELEVEN EDMUND STREET
BIRMINGHAM
B3 2HJ

SEAL

Assigned to Master:

DAVISON

Brief details of claim

The Claimants' claim is for damages for breach of contract made between the Claimants and the Defendant and/or negligence arising out of or in connection with the Defendant acting as a solicitor for the Claimants and providing conveyancing services and advice in relation to the purchase of a property situate at 126, 128, 130 Rotherhithe New Road, London, SE16. The Claimants have complied with sections 3 and 4 of the Practice Direction (Pre-Action Conduct).

Value

The Claimants expect to recover £865,000 plus interest.

For further details of the courts www.gov.uk/find-court-tribunal.

When corresponding with the Court, please address forms or letters to the Manager and always quote the claim number.

N1 Claim form (CPR Part 7) (06.16)

This form is reproduced from <http://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do> and is subject to Crown copyright protection. Contains public sector information licensed under the Open Government Licence v3.0

© Crown Copyright 2016

You must indicate your preferred County Court Hearing Centre for hearings here (see notes for guidance)

High Court of Justice, Queen's Bench Division, Royal Courts of Justice

Defendant's name and address for service including postcode

Gateley Heritage LLP
One Eleven Edmund Street
Birmingham
B3 2HJ

	£
Amount claimed	865,000.00
Court fee	10,000.00
Legal representative's costs	TBC
Total amount	TBC

Claim No.	
------------------	--

Does, or will, your claim include any issues under the Human Rights Act 1998? [] Yes [X] No

Particulars of Claim (attached) (to follow)

Please see attached Particulars of Claim

Statement of Truth

*(I believe) (The Claimant believes) that the facts stated in these particulars of claim are true.

* I am duly authorised by the claimant to sign this statement

Full name: Jane Elizabeth Anderson

Name of claimant's legal representative's firm: Irwin Mitchell LLP

signed  position or office held: Senior Associate Solicitor
(if signing on behalf of firm or company)

*(Claimant) (Litigation friend)
(Claimants' legal representative)

**delete as appropriate*

Irwin Mitchell LLP Solicitors
40 Holborn Viaduct
London
EC1N 2PZ

87 London – Chancery Lane
0207 404 0208
Jane.anderson@irwinmitchell.com

Claimant's or claimant's legal representative's address to which documents or payments should be sent if different from overleaf including (if appropriate) details of DX, fax or e-mail.

IN THE HIGH COURT OF JUSTICE

Claim Number:

QUEEN'S BENCH DIVISION

B E T W E E N:

(1) TARAY INVESTMENTS LIMITED

(2) BELLEVUE HOMES LIMITED

Claimant

-and-

GATELEY HERITAGE LLP

Defendant

PARTICULARS OF CLAIM

1. The First Claimant is a property development company that incorporated on 13 January 2011, and is based at 26 Kings Hill, West Malling, Kent, England, ME19 4AE.
2. The Second Claimant is also a property development company that incorporated on 17 January 2006, and is based at First Floor, 677 High Road, North Finchley, London, N12 0DA
3. The Defendant is and was at all material times a firm of solicitors practising from One Eleven, Edmund Street, Birmingham, B3 2HJ.
4. On or about 5 July 2012 the First Claimant agreed subject to contract to purchase 126, 128, 130 Rotherhithe New Road, London, SE16, which was registered at HM Land Registry under title numbers LB136517 and LN377770 ("the Property") for a price of £600,000.
5. The Property was being sold with planning consent that was granted by Southward Council on 30th March 2012. The consent would allow the First Claimant to demolish the existing building and then erect a four storey building comprising two studios, one one-bedroom, two two-bedroom and two three-bedroom flats.

6. On or around 11 June 2012 the First Claimant retained the Defendant and the Defendant agreed to act for it in relation to its purchase of the Property. The Defendant failed to provide the First Claimant with a retainer letter confirming the terms of engagement.
7. In any event, there were implied terms of the aforesaid retainer that the Defendant would exercise the care and skill to be expected of reasonably competent conveyancing solicitors in performing their duties pursuant to the said retainer. Further, or alternatively, the Defendant owed the First Claimant a duty of care in at common law to that effect.
8. Within the scope of that implied term and duty (and without seeking to limit their scope) the Defendant was obliged:
 - a. to obtain, consider and review the plans to the planning consent, the Land Registry and the Highway Authority searches;
 - b. to report back to the First Claimant the results of those searches;
 - c. to notify and bring to the attention of the First Claimant any adverse results arising from the aforementioned searches;
 - d. to advise the First Claimant on what steps should be taken to remedy any adverse results that might arise from the aforementioned searches;
 - e. to protect the First Claimant's position;
 - f. to act with all due diligence.
9. On 23 August 2012, the Defendant sent an email to the First Claimant in which a number of questions were asked, these were in turn answered by the First Claimant, inter alia, the question and responses were as follows:

"Is it your intention to acquire, keep and develop this site or do you intend to sell it straight on?"

(Answer) I will be developing the site with John Johnson and sell the completed units to end users."
10. The Defendant was therefore aware that the First Claimant was intending to develop and sell the individual units.
11. On 30 July 2012 the Defendant carried out a Land Registry title plan search and on 11 September 2012 the Defendant carried out a Highways Authority search.

12. On 3 October 2012, the Defendant sent an email to the First Claimant which stated:

"So far as the above property is concerned all of my conveyancing searches are now to hand and all is pretty much in order."

13. The aforementioned email indicated that there were two outstanding issues, namely that the Seller's solicitors still needed to provide copies of the approved plans referred to in the planning consent ("the Plans") and replies to standard property enquiries.

14. On 16 October 2012, the Defendant sent a letter to the First Claimant which attached the Report on Title. The letter made clear that the only outstanding issue was the sellers reply to the standard property enquiries.

15. The Report on Title failed to bring to the First Claimant's attention that there was a potential discrepancy that needed further investigation between the Plans, the Land Registry Search and the Highways Authority Search. The Report on Title at paragraph 5.1 merely repeated, without any analysis, what was contained in a note from the Highways Searches division of the London Borough of Southwark.

16. On or around 24 November 2012 the First Claimant entered into a Joint Venture Agreement ["the JV"] with the Second Claimant for the purpose of purchasing, developing and selling the Property. Pursuant to clause 4 of the JV:

"The profits and losses of the Joint Venture shall be determined in accordance with good accounting practices and shall be shared amongst the Joint Venturers in proportion of their respective capital contributions."

17. On or around 8 January 2012, the Second Claimant retained the Defendant and the Defendant agreed to act jointly for it and the First Claimant in relation to the purchase of the Property.

18. The contractual and tortious duties that the Defendant owed the Second Claimant are identical to that it owed the First Claimant.

19. In order to purchase the Property and fund the development the Claimants negotiated a Loan Facility ("the Facility") with Titlestone Property Lending ("Titlestone").

20. The Facility letter was dated 21 January 2013 and sets out the terms of the lending. Pursuant to clause 2.1 of the Facility Letter the Site Advance of £434,000 was to be used towards the acquisition of the Property and pursuant to clause 4.1 the drawdown of the Site

Advance, "must take place no later than 3 months from the date of the Facility Letter.", namely the 20 April 2013.

21. DAC Beachcroft were retained by Titlestone.

22. Due to the Claimants needing to undertake groundwork investigations Titlestone agreed to extend the drawdown until 1 July 2013.

23. On 22 January 2013, the Defendant informed the Vendor's solicitors that the Claimants were looking to exchange on 10th February 2013 and complete 6 weeks thereafter or upon vacant possession being obtained.

24. On 30 April 2013 @ 12:14, the Defendant sent an email to DAC Beachcroft enquiring whether there were any outstanding issues ahead of the draw down.

25. On 1 May 2013, the Defendant received an email from Peter Williams, Real Estate Partner at DAC Beachcroft, that stated:

"I note that the forecourt [of the Property] is adopted footway. Presumably as this is to form a part of the development a stopping up order will be required."

26. Following the receipt of this email, Mr Simpson on behalf of the Defendant spoke to Mr Ealey of the Second Claimant and raised the issue of the stopping order. On 2 May 2013 @ 15:56, the Second Claimant sent an email to the Defendant, stating:

"The planning office seem to think as you do that as we own the land we do not need to do a stopping order. Do we need to do this or are we ok with just boarding it up and building?"

27. On 7 May 2013 @ 16:33, Mr Simpson on behalf of the Defendant, sent an email to DAC Beachcroft, to which Mr Ealey is cc'd into, it stated:

". . .We have spoken to the Highways Dept who have confirmed that Abbeyfield Road (as per the Local Search result) is indeed adopted highway. Written confirmation is to follow shortly.

. . .No exchange of contract has taken place as yet. My client first requires the comfort of knowing that the funding monies from your client will be available. The Seller will not serve notice terminating the AST until an unconditional exchange has taken place. . .

. . .It is not believed that a stopping order is required and no mention of the same was made during the planning process. Should one be necessary then my client will of course obtain it. . .

28. On 8 May 2013 @ 08:39, Mr Simpson on behalf of the Defendant wrote to Southwark Council in the following terms:

" . . .If you turn to the plan which was issued along with the planning consent, you will see that the eastern tip of the proposed development would appear to encroach upon the adopted footway according to the plan which accompanied your highway search result. Is that highways search result plan correct and, if so, will a stopping up order be necessary to accommodate the proposed development."

29. On 8 May 2013 @ 17:51, DAC Beachcroft sent an email to the Defendant that stated:

"I have raised the issue of the footway/stopping up order with my client. An order will be required and I understand that although it should have been revealed in the planning process it does not always follow that it is.

I think at the very least my client will need comfort that a stopping order can be obtained without risk and details of arrangements as to what footway will remain/have to be provided. Please take instructions and ask your client to open dialogue with the highways authority. Subject to what you are able to provide in this regards I will take instructions as to whether the actual stopping up order will be required before drawdown."

30. By way of an email dated 10 May 2013 @ 11.42, Southwark Council confirmed that a stopping up order would be needed to enable the proposed development works to take place.

31. On or around 10 May 2013, Mr Coppen of the First Claimant was informed directly by the vendor that exchange of contracts needed to take place by 17 May 2013. The Defendant was informed of this and wrote an email to the Vendor's solicitors in the following terms:

"I have been informed by my clients that your clients require exchange of contracts to take place on this matter by the end of this week.

Is that correct?

If so, as we have just been advised by the Local Highways Dept that a stopping-up Order will indeed be required for the consented development could I request please that exchange be conditional upon my client obtaining such Order?

If that is acceptable to your clients then you and I can agree the appropriate form of wording for the contract and we can move this matter to exchange by close of play on Friday."

32. On 15 May 2013, Mr Ealey spoke to the Vendor's estate agent who confirmed that conditional contracts were not acceptable and that they would be re-marketing the Property on 20 May 2013. Mr Ealey sent an email to the Defendant on 16 May 2013 @13:53, confirming the same.

33. On 17 May 2013 @ 17:46, Mr Simpson on behalf of the Defendant sent an email to Mr Ealey, updating him on the lack of progress being made, it provided,

"I have not heard anything further from the Church's lawyer since I spoke to him yesterday.

He was going to recommend to his client that they enter into a conditional contract with us on the basis that the footpath issue is one that requires to be dealt with by anyone wishing to implement the existing consent.

When I hear from him I shall let you know. . ."

34. On 25 May 2013 @ 11.42, Mr Simpson on behalf of the Defendant sent an email to the Vendor's solicitor in the following terms:

"I wonder if you have had confirmation from your clients as yet with regard to our proposal that exchange be conditional upon satisfactory stopping-up order?"

35. On or around 5 June 2013, the First Claimant was informed that the Vendor was remarketing the Property.

36. On 13 June 2013 @17:13, DAC Beachcroft chased the Defendant by email for an update, the Defendant responded on 14 June 2013 @ 09:42 stating that there was no further news.

37. On 24 June 2013 @ 13:56, the Defendant chased the Vendor's solicitor by email on its proposal for a conditional exchange. The Vendor's solicitors did not respond until 24 July 2013, in which it was confirmed that the Vendor, "accepted an offer for the sale of the

property following re-advertising." This sale of the Property was to a third party not connected with the First or Second Claimant.

38. On 25 June 2013, the Claimants received an email from Titlestone, in which it refused to allow the Claimants to drawdown on the Site Advance without the stopping order issue being resolved.

39. In breach of contract and/or negligently the Defendant failed to exercise the care and skill to be expected of reasonably competent conveyancing solicitors in performing their duties pursuant to the said retainer.

PARTICULARS

- a. Failing to discover, at any time prior to being told by DAC Beachcroft on 1 May 2013, that the proposed development encroached upon the adopted footway ("the Discrepancy");
- b. Failed to discover, at any time prior to 1 May 2013, that in order for the proposed development to proceed that a stopping up order would be required;
- c. Failing to highlight or otherwise bring the Discrepancy to the attention of the Claimants within the Report on Title;
- d. Failing to advise the Claimants to check the Plans, and the search results contained within the Report on Title to ensure that there were no discrepancies between them.
- e. In the alternative, if the Defendant did discover the Discrepancy, it failed to notify the Claimants of it until 1 May 2013;
- f. Upon, being informed of the Discrepancy by DAC Beachcroft, the Defendant failed to provide any, or any adequate advice to the Claimants as to what steps it needed to take to ensure that it would not lose the opportunity to purchase the Property, in particular, but not limited to, how a stopping up order could be obtained and how long it would take;
- g. Failing to discover from the London Borough of Southwark how long it might take to obtain a stopping order;
- h. Upon discovering the Discrepancy, the Defendant failed to take any or any adequate steps to ensure that the Claimants would not lose the opportunity of purchasing the

Property. Such steps would have included, but are not limited to, informing the Vendor's solicitors immediately of the Discrepancy rather than 12 days later, seeking a conditional exchange, or asking for the date of exchange to be pushed back.

- i. Failing, to advise the Claimants, adequately or at all, on how it might protect its position and prevent the Vendor selling the Property to a third party;
- j. Failed to protect, adequately or at all, the Claimants' position by allowing the Property to be sold to a third party;

40. In order to establish the aforementioned breaches the Claimants will rely upon the admission contained within the Defendant's open letter of 15 July 2013, which provides:

"We should have identified the discrepancy between the Highway map and Title plan in the report on title Ray [Simpson] prepared in October 2012."

41. But for the Defendant's negligence, had the Claimants been informed of the Discrepancy in the Report on Title in October 2012, the Claimants would have had sufficient time to regularise the position by, amongst other options, obtaining a stopping up order prior to the proposed date for the exchange of contracts, namely 17 May 2013, or alternatively they would have been able to satisfy Titlestone that an application for a stopping up order had been submitted and that it was likely to be granted, as indeed it was.

42. By only informing the Claimants on 1 May 2013 of the Discrepancy, the Claimants had insufficient time to arrange the stopping up order or take any other action prior to the proposed date for exchange of contracts.

43. Further, without a stopping up order in place, or without the application for a stopping order being submitted, prior to exchange of contracts,, Titlestone Property Lending would not consent to the Site Advance drawdown and without the funding provided by Titlestone the Claimants were not in a financial position to purchase the Property.

44. As a result of the above the Claimants lost the opportunity of purchasing and developing the Property.

45. By reason of the matters aforesaid, the Claimants have suffered loss and damage;

PARTICULARS

The profits for the proposed development were projected to be as follows:

Gross sale price of 7 apartments:	£2,476,000
Less Purchase Price and associated costs	£621,000
Build costs	(£790,000)
Legal costs/disbursements	(£40,000)
Funding Costs	(£160,000)
Net profit	<u>£ 865,000</u>

46. Further, the Claimants claims interest pursuant to section 35A of the Senior Courts Act 1981 on any sum which may be awarded herein for such period and at such rate as the Court shall think fit.

AND the Claimant claims:

- (1) £865,000
- (2) Interest pursuant to section 35A of the Senior Courts Act
- (3) Costs

JAMES NEWMAN

STATEMENT OF TRUTH

The Claimants believe that the facts stated in this Particulars of Claim are true.

Signed: 

Dated: 6/8/18

Position: DIRECTOR (TACH INVESTMENTS LTD)

Signed: 

Dated: 8 August 2018

Position: DIRECTOR (BELLEVUE HOMES LTD)

