

Courting attention: The boom in the six-figure property lawsuit

From duelling divorcees and basement wars to lawsuits against developers, legal battles are on the rise as the market soars



There is little that piques the interest more than a court case — the more salacious and titillating the mud-slinging, the better. While pinstriped solicitors and periwigged barristers have been slugging it out on behalf of property owners for decades, their caseload has escalated in the past couple of years, with increasing numbers of disputes involving everything from basement digs to rising damp. Why? Thanks to a rising property market, the stakes have never been higher. Here's the inside track on what's happening behind the closed doors of the courtroom.

Basement wars

As everyone from actors to actuaries tries to eke out additional living space by going underground, lawyers are finding their in-trays bulging with legal tussles over basement excavations. Last year, *The Sunday Times* revealed that Lord Mitchell, a Labour peer, was suing the woman who lived behind him because he claimed that her low-level extension was “trespassing” on the borders of his £3m north London home. And a group of well-heeled residents led by Victor Blank, the former boss of Lloyds Banking Group, recently launched an unsuccessful legal bid to stop an underground pool being built near their homes in Hampstead Garden Suburb.

“Basement development has led to an increase in disputes, especially in prime central London,” says Laura Odlind, an associate at Mishcon de Reya. “With values at a new peak, we expect more disputes to find their way to the High Court, especially those between high-net-worth individuals.”

Common battles include owners of neighbouring properties seeking to block the proposed work before it goes ahead, or claiming for damages to their home, or for the noise and disruption caused by the work. In some cases, developers can find themselves having to pay to relocate the neighbours.

“The cost of a large basement or refurbishment can run into millions — people are prepared to spend to get the property they want,” says Veronica Carey, special counsel at Withers. “Legal claims in these cases can be for hundreds of thousands of pounds.” Even the owners of the basements are suing over bodged jobs — more than £21m in compensation has been paid out for subterranean extensions built since 2005, according to the National House Building Council.

New homes

Many buyers hanker after a townhouse or flat that’s fresh out of the box. Yet buying new-build properties can be fraught with problems. Though most litigation in this field occurred after the financial crisis — when buyers who had agreed to buy off-plan properties during the boom found that, when they came to complete, values had fallen by up to a third — lawyers are dealing with a new kind of dispute in today’s market.

“One of my clients put down a large deposit for a £14m flat in a high-value new-build development in the City, and is due to complete in two months’ time,” says Simon Thomas, a partner at Thomas Legal Group. “The other day, the developer said that the interior specification would be changing. The kitchen, which costs more than £100,000, is now going to be from a different supplier, and there will be a different internal configuration. We have not seen that radical a departure from the spec laid out in the contract before, and are considering court action.”

Earlier this year, a New York-based banker won a four-year battle over his apartment at the £1.15bn One Hyde Park development, in Knightsbridge. Geoffrey Logue complained that, a year after he had put down a deposit for a £12m luxury flat, he was told that the kitchen would be fitted with alternative units. “I didn’t want cream lacquer cabinets in my kitchen, no way — it looks like Ikea,” Logue said. “I wanted a dark wood kitchen frame with bronze.” The financier secured a payout of almost £4m, along with legal expenses, from the developer, Candy & Candy.

Boundaries

Most property complaints are settled before they get to trial, according to Clive Beer, head of professional rural services at Savills estate agency. Yet Beer, who created the agency’s mediation panel, is routinely surprised by the venom surrounding disputes over property boundaries. “I always find it staggering, the willingness people have to litigate over a small patch of land that’s worth a couple of thousand pounds,” he says. “The legal costs could be £200,000.”

Courts are increasingly encouraging parties to mediate prior to going to trial. “Recent case law has punished those who refuse to do so,” Beer says.

Family fallout

Many buyers who have scrambled onto the housing ladder since the financial crisis have the bank of mum and dad to thank. Yet lawyers are seeing increasing numbers of people come to court when relationships turn sour. “We have had a spate of cases where third parties — usually parents — have made substantial contributions to their child’s property purchase, which is often carried out with a partner,” says Robert Clark, a senior associate at Silverman Sherliker. “If the child’s relationship breaks down and the property needs to be sold, it can be difficult for the parents to recover that payment. Most of these cases are settled, but a surprising number go to trial.”

Divorce

The division of marital property has always been an issue in divorce proceedings, but the state of the housing market has a profound impact on whether people decide to split for good. “During periods of house-price stagnation, or when values are falling, there is a lot of hesitancy to instigate divorce proceedings,” says David Lister, a partner in the family department of Mishcon de Reya. “Often, the house is the principal asset — and, while it may not be for the high-net-worth people we deal with, it’s still the asset that causes the most emotion. But now we have a relatively buoyant property market, people are no longer being put off instigating proceedings.”

Lister is also seeing a rise in property claims when cohabiting couples part ways. “When house prices are rising and a cohabiting couple split up, there is probably a greater tendency for the person who doesn’t own the home to claim an interest in it,” he says. “We are seeing more of these cases because the sums at stake are bigger.”

Panic buying

You may have read about the eminent property QC and his wife who are embroiled in a High Court battle over their purchase of a £3.6m country house in East Sussex. They exchanged contracts before seeing the surveyor’s report, which revealed that the Victorian manor was badly affected by rising damp and dry rot. They refused to complete the purchase, which was agreed in 2011, alleging “reckless misrepresentation” by the sellers — who are now suing them for a six-figure sum.

“You’d be amazed at how many high-value purchases go through before the buyer has seen the survey results,” says Simon Thomas. He cites a client who agreed to buy a large townhouse in central London, and didn’t wait for the survey results before exchanging. The survey has highlighted leaks, so the buyer wants to pull out.

“The thing that ties many cases together is that Warren Buffett saying, ‘Only when the tide goes out do you discover who’s been swimming naked,’” says Jonathan Seidler QC, of

Wilberforce Chambers. “There is a litigation time lag of 18 months to two years, so many of the cases that are coming to court now are ones where people have been caught out, often during the days of recession.”

According to Seitler, many cases arise because people panic buy. “You saw it happen when stamp duty on £2m homes went up from 5% to 7% overnight in 2012 — a lot of deals were rushed through and, in some cases, people acted without doing due diligence. The same thing could happen again with mansion tax, as people rush through transactions in anticipation of a levy coming in. To see the results of what people are doing now, give me a call in two years’ time.”