

IN THE HIGH COURT OF JUSTICE

PT-2019-LIV-000021

BUSINESS AND PROPERTY COURTS IN LIVERPOOL

PROPERTY TRUSTS AND PROBATE LIST

His Honour Judge Cadwallader sitting as a Judge of the High Court

Neutral Citation Number: [2021] EWHC 963 (Ch)

Monday 19th April 2021

BETWEEN:

MARC ANTON PAUL HORN

Claimant

and

(1) TUSCOLA (FC105) LIMITED

(4) PINNACLE STUDENT BUYERS (LEEDS) LIMITED

(5) TUSCOLA (109) LIMITED

Defendants

JUDGMENT

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties by email, and by release to BAILII.

The date and time for hand-down is deemed to be 10.30 a.m. on Monday 16 April 2021

Introduction

1. The Claimant, Mr Horn, and his wife, Katherine Tee, entered into a written Agreement dated 23 June 2014 (“the Agreement”) to purchase a leasehold off-plan student flat, to be Unit 609, floor six, Austin Hall, Servia Road, Leeds LS7 1NJ (“the Property”) for the total price of £52,995.00 from Pinnacle Student

Developments (Leeds) Ltd (“PSDL”). The purchasers used conveyancing solicitors to do so. They paid a reservation fee of £5,000 before entering into the Agreement, a Deposit of £26,797 upon entering into the Agreement, and the Balance of £21,198 two months afterwards, as the contract required. They never got their flat, and they never got their money back. Austin Hall has been built and, I think I was told, completed and occupied. PSDL was the subject of a compulsory winding up order on 8th August 2018.

Previous proceedings

2. On 15th March 2018, acting as a litigant in person, Mr Horn started Part 8 proceedings in the County Court at Liverpool against 13 defendants, all individuals, sued as agents and directors of various companies concerned with the transaction itself and subsequent events. After various procedural steps, Mr Horn lodged a notice of discontinuance against the Second, Seventh and Eighth Defendants in those proceedings on 8 October 2018; the claims against the Tenth, Eleventh and Twelfth Defendants were dismissed on 10th October 2018 on an application for an order striking out or dismissing those claims, and Mr Horn confirmed that he wished the Court to make an order discontinuing proceedings against the Ninth Defendant; Mr Horn served a notice of discontinuance on the First, Third and Fourth Defendants on 31st October 2018; on 18th December 2018 Mr Horn indicated that he no longer wished to proceed against the Thirteenth Defendant; and on 9th April 2019 the claim against the Fifth Defendant (Mr David Roberts) was struck out on the basis that Mr Horn’s statements of case disclosed no reasonable grounds for bringing the claim against him, and his claim against the Sixth Defendant (Mr

Michael Gubbay) was discontinued by consent. Mr Horn's application for permission to appeal was refused, and not renewed.

The present proceedings

3. By the present proceedings, which were commenced on 14th October 2019 Mr Horn, again acting as a litigant in person, sued Tuscola (FC105) Ltd, Tuscola (FC109) Ltd, Pinnacle Student Developments (Leeds) Ltd, and Pinnacle Student Buyers (Leeds) Ltd ("PSBL"). His claim form read as follows:

"The Claimant purchased a [*sic*] off plan student unit, the developers sold the freehold and the purchaser has accepted the contract is valid and the purchaser admits I have an equitable right but refuses to complete the development works, and refuses to convey the lease (the property is fit for purpose as it has been rented out by the purchaser) and is offering completion on terms which are totally in breach of the contract. I seek the court to compel specific performance to compel completion."

As a summary, this is a good deal clearer than the Particulars of Claim, which went through several evolutions.

4. The order of District Judge Lampkin dated 13th January 2020 noted that the proceedings against Pinnacle Student Developments (Leeds) Ltd had been discontinued, ordered that the proceedings against Tuscola (FC109) Ltd were discontinued, and added Tuscola (109) Ltd as a defendant. The further order of District Judge Lampkin dated 7 September 2020 recorded that Mr Horn had informed the court that he had reached an agreement in principle with Tuscola (109) Ltd and Tuscola (FC109) Ltd (against which proceedings had been discontinued), that following the court ruling on the Claimant's case against PSBL they would carry out what they had agreed with him, and that he confirmed that he now sought determination of the following questions in these proceedings, namely:

- (1) What were the terms of his agreement with PSBL?
- (2) Did PSBL act in breach of those terms?
- (3) Was the discharge of the legal charge held by PSBL over the property herein on behalf of the Claimant in breach of those terms?
- (4) Was PSBL trustee of monies held on behalf of the Claimant pursuant to a trust?
- (5) What were the terms of that trust?
- (6) Were such terms of trust breached?

On that basis, the learned District Judge stayed the claims against the other 2 companies that gave directions for further statements of case addressing only those 6 questions in relation to PSBL, together with witness statements. The order did not give permission to amend the claim form, and no such permission was sought.

5. The trial was later listed for 2 days before me by Microsoft teams. On 17 March 2021 PSBL (which pursuant to the directions last mentioned had filed an amended Defence dated 11th January 2021) served a purported re-amended Defence dated 17th March 2021, late and without the permission of Court. At the hearing before me, given that it added little and that Mr Horn did not object, I gave permission to PSBL to rely on that re-amended Defence.

Representation

6. Mr Horn appeared before me in person. PSBL was represented, with my permission, by its sole director, Mr Adam Holloway, who told me that he was authorised to do so.

The purpose of the proceedings

7. Given that PSBL had not been a party to the Agreement made between Mr Horn and his wife and PSDL, and had never owned the Property, it was unclear to me whether and if so on what basis I was being asked to make an order for specific performance of the purchase contract against PSBL. It seemed clear from what Mr Horn said that he was not asking me to make such an order. Given that it seemed on the face of things at least that PSBL had no or negligible assets, as Mr Holloway told me, it was unclear to me what Mr Horn hoped would be achieved by my determining the 6 questions referred to above. That was particularly so because it seemed that Mr Holloway was another disappointed Pinnacle buyer (I understand there have been many); was a member of a group of such buyers (not including Mr Horn, who was taking an independent line); and had purportedly got himself appointed to be the director of PSBL in the interests of that group; and by no means resisted Mr Horn's claim, as long as it did not interfere with that group's plans for PSBL by resulting in a judgment against it which might mean it had to be liquidated (such as perhaps an account of monies which it had disposed in breach of trust in favour of Mr Horn, an idea which I asked about at the hearing).

8. The answer turned out to be that the First and Fifth Defendants, against whom this claim had been stayed, had reached some kind of oral conditional agreement with Mr Horn to convey to him a flat in another development altogether upon terms which included getting answers (or perhaps particular answers: this was not immediately clear) to those 6 questions as a result of this hearing.

9. Upon further enquiry, it emerged from Mr Horn's account that Mr Gubbay (a claim against whom personally had been struck out in previous proceedings) was concerned with those Defendants, and with the company which now owns Austin Hall. Mr Horn hoped that getting answers to the 6 questions which involved a finding that there had been breach of contract or trust on its part might help in resuscitating a Legal Charge formerly held by PSBL over the development (the Seller's Legal Charge mentioned below), which might provide leverage against those Defendants and the current owner so as to force completion of the sale to Mr Horn of either the Property or an equivalent property.

10. Moreover, the First and Fifth Defendants apparently hoped that findings of that kind obtained at the suit of Mr Horn would help them to sue Mr David Roberts, who had been the sole director of PSBL at the time of the matters complained of and the solicitor for PSDL (it will be recalled that Mr Horn had already sued Mr David Roberts, but his claim had been struck out). It sounded as if the agreement was conditional upon Mr Horn's getting the answers the other defendants wanted, though Mr Horn was reluctant to say exactly.

11. Mr Horn also indicated that if he did not get the answers he wanted as a result of this hearing, that would still be helpful because it could form the basis of an appeal against the order striking out his own claim against Mr Roberts in the previous proceedings. (Thus, to this extent these proceedings were an inadmissible collateral attack upon that decision.) He was not troubled by the possibility that he might be out of time for such an appeal because, he assured me, there is no statute of limitation preventing an appeal being brought in cases of fraudulent misrepresentation. Nor was he troubled by the possibility that any judgment I might

give would not bind persons who were not party to these proceedings such as the present owner, or Mr Roberts, and would therefore be of limited if any assistance, because he told me that it would be persuasive. In the end, I understood him to want the Court, if anything, to make declarations concerning the answers to the 6 questions mentioned above.

The hearing

12. While I recognised the ingenuity and persistence demonstrated by Mr Horn in pursuing his strategies, I was very doubtful that it would help him in the way that he hoped (whether he got the answers he wanted to the 6 questions or not) and whether it was not an abuse of the process of the court (quite apart from the question of how I was being asked to determine the 6 questions mentioned above in the context of a claim for specific performance of the Agreement). Certainly, the collateral attack on the previous decision would be an abuse. I indicated that I would have to consider whether or not just to strike out his claim in respect of those 6 questions, at the least. Nonetheless, in order to consider that the simplest course was to hear the case anyway, which I did. Mr Horn and Mr Holloway gave evidence and made submissions and in the event the hearing concluded in the middle of the first afternoon.

13. Included in the evidence upon which Mr Horn and Mr Holloway both wished to rely was a witness statement of Joanna Louise Makin dated 6th December 2018 in the previous proceedings in which she had represented Mr Roberts. Insofar as was necessary (given that Mr Horn told me that it had been put in evidence at a hearing

held in public) I gave permission for reliance to be placed upon it pursuant to Civil Procedure Rules 32. 12.

The Agreement

14. As already mentioned, by a written Agreement dated 23rd June 2014 and made between PSDL as seller and Mr Horn and Katherine Tee as buyers, the latter agreed to buy the leasehold of Unit 609 (“the Property”) in the building (“the Building”) to be known as Austin Hall and to be constructed on the freehold land at Servia Road, Leeds registered at HM Land Registry with absolute title under title number WYK463417 (“the Estate”) for the Purchase Price of £52,995, made up of the Deposit of £26,797, the reservation fee of £5000 and the Balance of £21,198. The effect of clause 3.1.2 of the contract was that the balance had to be paid within 2 months from the date of exchange of contracts. Completion was to take place 10 working days after the date of issue of a certificate of practical completion (the definition of which included any interim certificate of practical completion). If by 31st December 2015 completion of the sale had not occurred, the Buyer might at any time afterwards before the Date of Practical Completion (apparently a defined term, but no definition appears: I take it to mean the date which fixed the Completion Date) rescind the contract by notice: Clause 8.6. In that event, there was provision for repayment in Clause 8.7 of the contract, to which I turn below.

15. It is plain from the terms of the Agreement that at the time PSDL did not own the Estate, and the Building had not yet been built. The Standard Conditions of Sale (5th edition) as amended by the Agreement applied. By Condition 2.2.4 the deposit was to be paid electronically from an account held in the purchasers’ conveyancers

name to an account in the name of the seller's conveyancer or direct to the seller's conveyancer. Clause 2.1.2(i) of the Agreement provided that upon receipt of the Deposit, the seller's solicitor should place it in the Designated Account as soon as reasonably possible, but in any event within 2 working days after the date of the contract, on the terms and conditions set out in the contract. The Designated Account was to be an account at a London clearing bank designated to hold both the Deposit and (as I construe it) the Balance for PSBL and in its name.

16. PSBL seems to have been set up by PSDL or those promoting its activities, and had been incorporated on 5 March 2014. The Agreement provided that PSBL was to have a director who would represent the interests of the buyer and seller, and to that end was a company limited by guarantee. The director might be a partner or director from the seller's solicitors (in the event, it was Mr David Roberts). PSBL had been formed as a stakeholder to hold the Deposit and Balance in the Designated Account to provide protection to the buyer and to facilitate payment of monies out of the Designated Account in accordance with the terms of the Agreement: clause 2.10.1. Moreover, PSBL and its director as stakeholder were to comply with the terms of Clause 5 of the Agreement relating to payments from the Designated Account and hold for the Buyer the rights granted by the Seller's Legal Charge and where necessary enforce them: clause 2.10.3.

17. Although some words appear to be missing, it seems clear enough that by Clause 3.1.1 of the Agreement the buyer's Solicitor was (directly or indirectly) to pay the Deposit into the Designated Account, where PSBL should hold it as stakeholder. This seems to be no provision for the Reservation Fee to be held in the same way (I suspect there is another document which will have covered this, but it is not before

me), but Clause 3.1.2 of the Agreement provided that the Balance of the Purchase Price was to be added to the Deposit and released as provided, so it seems that the Balance was to be held in the same way as the Deposit.

18. Clause 5.1 of the Agreement provided that

“The Deposit shall be paid to [PSBL] as stakeholder and be credited to the Designated Account to be held in trust by [PSBL] in accordance with a declaration of trust dated [blank] 2014 and released to the Seller’s Solicitor in the manner and on the terms herein provided...”

19. Clause 5.2 provided that PSBL should pay from the Designated Account certain items described as the Development Expenditure, including all sums required to transfer the estate into the name of the seller and register the transfer, repay any money lent to the seller to enable it to purchase the estate, certain professional invoices, payments under the building contract or ancillary thereto, and other payments. The payments of Professional Invoices, the construction of the building, and sale marketing and instruct the building were to be certified by a Supervisor as being due for payment. Other sums did not require such certification. The Supervisor was appointed by PSDL as its agent under the building contract for the construction of the building.

20. By clause 5.5, the buyer irrevocably authorised the making of those payments such that so long as the seller performed the seller’s obligations set out in the agreement, no such payment should give rise to any claim by the buyer for compensation or otherwise.

21. Curiously, in view of these provisions, PSBL was not a party to the Agreement, as already noted.

The Seller's Legal Charge

22. The Seller's Legal Charge was a legal charge dated 9th April 2014 and made between PSDL and PSBL whereby PSDL charged the Estate to PSBL as a continuing security for, firstly, the funds held from time to time in the Designated Account pursuant to the Agreement; and, secondly, the performance of the Secured Obligations (effectively, the obligations of PSDL under the Agreement). It was to be discharged as soon the secured obligations had been satisfied by PSBL. Nothing in the Legal Charge was to prevent the release of funds under Clause 5 of the Agreement. PSDL covenanted with PSBL to carry out the Secured Obligations.

23. The security first offered appears to be illusory. The funds held from time to time in the Designated Account were to be held by PSBL in any event, which will hardly have needed security for that. If the funds had been paid out, they would have been paid out by PSBL itself, and once they had been paid out, they would no longer be funds held from time to time in the designated account, and would not be secured. Perhaps it could be argued that the charge was security for the reconstitution of funds which had been paid out in breach of the Agreement, however. That is not an argument which has been raised or with which I am directly concerned.

24. The Secured Obligations are defined as "the obligations on the part of PSDL incidental to the development and letting of the [Estate] in the manner set out in the

Agreement/s”. There may be room for argument about how exactly if at all the estate was to be security for the performance of these obligation, and of which obligations. The idea seems to have been that the potential competition of buyers with competing interests would be resolved by or through PSBL. The Legal Charge itself gave no rights directly to any of the buyers, of course.

The Declaration of Trust

25. The Declaration of Trust referred to is that dated 25th April 2014 and made by PSBL. It recites that by the Agreement PSBL had agreed to make the declaration in order to acknowledge its duty of care and liabilities under the Agreement to better protect the beneficiaries. This is not an operative provision, but a recital. It appears to be an inaccurate recital: since PSBL was not a party to the Agreement, the Agreement imposed no duties of care or liabilities upon it; the reference to protecting the beneficiaries appears to be mere verbiage.

26. However, PSBL declared that it would receive and hold the Deposit and the Instalment (in the context of this transaction, that must mean the Balance) in the Designated Account ‘as stakeholder on trust’ for the beneficiaries in accordance with the terms of the Agreement. It undertook to pay monies out of the Designated Account only in accordance with the terms of the Agreement and in particular the provisions of clause 5 of the Agreement to which I have already referred. The beneficiaries were defined as, in effect, all the buyers (that is, all the buyers of property within this particular development). It therefore follows that it must always have been contemplated that monies paid to PSBL under these and cognate provisions were to be held in a mixed account in the name of PSBL.

27. The Declaration of Trust imported without specifying them the appropriate provisions of the Agreement with Mr Horn and with every other buyer in the development as trust or stakeholder obligations. The candidates for those obligations are as follows. PSBL was to hold monies deposited in the Designated Account pursuant to the contract. PSBL was to comply with the terms of Clause 5 of the Agreement relating to payments from the Designated Account, and hold for the Buyer the rights granted by the Seller's Legal Charge and where necessary enforce them. Otherwise, the provisions of the trust are not spelled out with any great degree of clarity: the Deposit was to be paid to [PSBL] as stakeholder and be credited to the Designated Account to be held in trust by [PSBL] in accordance with the Declaration of Trust.

28. What I take from this is that, subject to payments out in accordance with clause 5 of the agreement, PSBL was to hold the monies received 'as stakeholder'.

Stakeholder or trustee of the monies

29. In the ordinary way, a contractual deposit is held by a stakeholder as "as principal upon a contractual or quasi-contractual obligation to pay the like sum to one or other of the parties according to the event": *Potters v Loppert* [1973] Ch 339; *Gibbon v Lutton* [2002] QB 902. It follows that neither party has any proprietary interest in the deposit, and there is no trust.

30. If, therefore, one party considers that the deposit has been wrongly paid to the other, his only remedy against the stakeholder is an action (in contract or for money had and received) to recover the amount of the deposit: he would not be entitled to an

order requiring the stakeholder to replace the amount of the deposit in a designated account or to pay it into court, as a trustee might have to: *Hastingwood Property Limited v Saunders Bearman Anselm* [1991] Ch 141.

31. Unlike a trustee, a stakeholder is normally entitled to retain any interest earned by the deposit pending payment to the appropriate party: *Smith v Hamilton* [1951] Ch 174. It is different for solicitors: the Guide to Professional Conduct issued by The Law Society states that “A solicitor must pay interest on money held in his or her capacity as stakeholder, in accordance with the Solicitors’ Accounts Rules, to the person to whom the stake is paid”. However, according to the editors of Emmet & Farrand, Title, it is not normal practice for a stakeholder in conveyancing transactions to retain interest instead of paying it to the recipient of the stake.
32. If the deposit is not recoverable from the stakeholder (for instance, on account of his bankruptcy) the loss is borne by the vendor in any case where a binding contract has been concluded: *Rowe v May* (1854) 18 Beav 613; *Barrow v White* (1862) 2 John & H 580.
33. In the present case, PSBL was not entitled to invest the monies received and retain on its own account the interest earned. The monies were to be held in a designated account, and not laid out save in accordance with the terms of the Agreement. It was explicitly stated to be held in trust. It is to understand why they should have been a Declaration of Trust at all, if all that was intended was a contractual stakeholder arrangement of the ordinary sort. There is no reason in principle why a trust should not be a trust to hold and to pay out ‘as stakeholder’, the beneficiary under one set of circumstances (the completion of the contract purchase) being the

developer, PSDL, and under another (rescission of the contract by the buyer), the buyer. It is plain from the authorities that the merely contractual nature of a stakeholder is subject to agreement to the contrary.

34. Difficult questions may arise where some among the class of beneficiaries have validly rescinded the contract and are entitled to their money back, and some have completed, and there is a single fund: for example, upon what trusts and in what proportions is the fund as a whole then held? I do not see these difficulties as necessarily inconsistent with the existence of a trust, however.

35. I therefore conclude that the Declaration of Trust did indeed contemplate a trust of the Deposit and Balance.

Trust of the Seller's Legal Charge or agency

36. It seems reasonably clear that as against PSDL, as a matter of contractual right under the Agreement, buyers who have validly terminated pursuant to clause 8.6 of the Agreement, are to be entitled at least to repayment by PSDL of the sums paid on their account pursuant to clause 5 of the Agreement. Clause 8.7 provides that if the PSBL does not return those funds paid out, the buyer is at liberty to pursue the repayment of all funds paid on the part of the buyer out of the Designated Account by way of enforcement of the Seller's Legal Charge. The primary remedy for the return of monies paid out is the contractual right of the buyer for repayment by PSDL, failing which the buyer may have remedies against PSBL either in respect of breach of trust (but only if the monies were paid out breach of trust, and not properly made), or against PSDL by requiring the enforcement of the Seller's Legal

Charge under the contractual right in that behalf contained in clause 8.7 of the agreement.

37. However, only PSBL can itself enforce the Legal Charge as security for the performance of the Secured Obligations. The Declaration of Trust does not provide that PSBL holds the Legal Charge upon trust for the buyers, or Mr Horn in particular.

38. However, clause 2.10.3 of the Agreement provides that both the PSBL and the director or directors (which must be a reference to the director mentioned in clause 2.10 of the agreement) as stakeholder are to comply with clause 5 and 'hold for the buyer the rights granted by the Seller's Legal Charge and where necessary enforce the same'. That language is capable of referring either to trust or to agency. In other words, it contemplates either that PSBL will hold the rights granted by the Sellers legal charge on trust for the buyer, or as his agent. But PSBL was not a party to the Agreement, and there is no explicit independent evidence that it accepted or assumed the responsibilities either of trustee or other agent in relation to the rights granted to the buyer by the Legal Charge. On the limited information available to me such an acceptance or assumption is to be inferred, however, from its participation in the scheme of which the Agreements, the Legal Charge and the Declaration of Trust all formed part.

39. For present purposes it is probably unnecessary to express a view whether PSBL Oheld the benefit of the legal charge upon trust or as agent. Either way, it ought to be possible at least in theory to oblige it to enforce the Legal Charge if it were enforceable. And if as the result of a breach of trust on its part the Legal Charge

were not enforceable, PSBL might at least in theory be liable out of its own assets if any to reconstitute the fund left unsecured and lost.

History

40. Mr Horn and Katherine Tee appears to have paid the Deposit and, later, the balance to the solicitors acting for PSDL. Contrary to the Agreement, PSDL did not procure that the solicitors pay them into a Designated Account. The witness statement of Joanna Makin blandly suggests that deposits were held by the solicitors themselves as stakeholder. The Claimant's amended supplemental Particulars of Claim allege that the monies were paid into Wirral Solicitors' general client account. That account was not in the name of the PSBL. I take it that the monies paid in will have been mixed not only with other deposits paid by other buyers in this development, but also with the money of other clients altogether. This was probably a breach of obligation on the part of Wirral Solicitors, though I make no finding as to that. I assume that PSBL knew and approved, since its sole director at the time was a member of that firm. No doubt PSBL could have called for the money to be placed in a designated account in its name at any time, but there is no suggestion that it did so. In my view, that was a breach of trust on its part, because it was only authorised to hold such monies in the Designated Account.

41. Moreover, the circumstance that the monies were held in the account in which they were held cannot have relieved PSBL of its duties as a trustee in relation to those monies. This would not apply, however, to other monies received into the same account on behalf of other clients, nor to monies received by, for example, PSDL in respect of its later disposal of the estate.

42. The Long Stop Date came and went. The Claimant may have purported to rescind the Agreement at some stage thereafter, but neither he nor PSDL seem to have treated it as having been rescinded. I take it, therefore that on the footing of an estoppel by convention, if nothing else, the Agreement for sale remained in force.
43. On or about 29th of June and 2019, PS and DL transferred the freehold title to the Estate to the First Defendant on sale, which leased it back to PSBL. In the process, the Legal Charge was discharged by PSBL. Thereafter, both the freehold and leasehold were subject to various charges, including a charge over at least the leasehold in favour of the PSDL which I am told was in similar terms to the original Seller's Legal Charge over the freehold. I have not seen the titles.
44. The papers mention there being a unilateral notice in favour of Mr Horn (presumably to protect his interest under the Agreement) which survived some sort of attack upon it in the Tribunal (presumably the Property Chamber of the First-tier Tribunal). I do not know how that currently stands, given that specific performance is claimed in the present proceedings.
45. The disposal of the freehold will not have been a breach of contract with the Claimant if it was undertaken with the consent of PSBL: clause 10.10 of the Agreement. I take it that such consent must have been given, because the discharge of the Legal Charge by PSBL was presumably for precisely that purpose.
46. The discharge of the Legal Charge was not a breach of any obligation on the part of PSDL: in particular, clause 10.11 of the agreement would not have prohibited it.

47. The Claimant complains that the discharge of the Legal Charge was a breach of trust on the part of PSBL, however. I have already accepted that there was a trust in favour of Mr Horn and others of the benefit of that Legal Charge, and I agree that without his consent that must have been a breach of the trust in his favour. There is no suggestion that he did consent. There is no material before me to find that it caused any loss (particularly since there seems to have been a replacement legal charge, albeit over the leasehold rather than freehold estate) and I am not asked to make any such finding in any event.

48. The Claimant complains that there have been numerous payments out of the fund to which these payments contributed which were in breach of the trust constituted by the Declaration of Trust made by PSBL, because not made pursuant to clause 5 of the Agreement and in particular not authorised by the Supervisor in accordance with that provision.

49. Mr Horn has identified payment certificates signed by persons he alleges were not authorised as the supervisor: £53,302.50 dated 18 December 2015; £16,698.00 dated 20 August 2015; and £274,140.05 dated 24th of February 2015. These appear to have been signed by one E. Slessor rather than by David Choules, the person named in the Agreement as the supervisor. The agreement provides for him to be replaced, but there is no evidence that he ever was. Accordingly, on that rather thin basis, I conclude that these payments are on balance likely to have been made in at least technical breach of trust. PSBL has made no attempt, perhaps can make no attempt, to justify them. It may be that there is a perfectly satisfactory explanation, but none is before me.

50. Mr Horn has identified further payments made against unsigned payment certificates: £243,240.08 dated 4 August 2014 and £287,085.18 dated 9 July 2014. The payment certificates are indeed unsigned. It is of course perfectly possible that there were signed certificates, or that these were authorised by the supervisor in some other but satisfactory fashion, but no attempt has been made by PSBL to justify them in these proceedings and, again, there is no satisfactory explanation before me. Accordingly, I must conclude that they are on balance likely to have been made in at least technical breach of trust.

51. Mr Horn also complains that payments were made out of that account from monies amounting to £929,198.68 received by PSDL on completion of the sale and leaseback. I cannot see how it can be said that those completion monies were subject to any trust in favour of Mr Horn: they belonged, presumably, to PSDL, as the witness statement of Joanna Makin confirms. I conclude, therefore, that there was no breach of trust in respect of these payments. Mr Horn complains these monies should have gone into completing the development and letting obligations, but they were not subject to any such trust, assuming for the moment any such trust is capable of being created, which is at least doubtful.

Conclusion

52. Accordingly, doing the best I can on the information before me and in the unusual circumstances in which this claim has come before me, the answer to the 6 questions which are (at least in form) in issue before me between the Claimant and PSBL are as follows.

- (1) Mr Horn entered into no agreement with PSBL. By a declaration of trust dated 25th of April 2014, PSBL declared itself to be a trustee on stakeholder terms and subject to the terms of the agreement of the Deposit and Balance (but not the Reservation Fee) paid by Mr Horn for the flat which he was purchasing. It also held the benefit of the Seller's Legal Charge upon trust for Mr Horn among others.
- (2) PSBL did not act in breach of any terms of an agreement with him, since there was none.
- (3) The discharge of the Legal Charge held by PSBL over the Estate was not in breach of any terms of an agreement with the Claimant, since it was not party to any such agreement. However, it was in breach of the trust in favour of Mr Horn among others upon which I have found that it held the Legal Charge. Whether that was a substantial or merely technical breach of trust I cannot tell.
- (4) PSBL was trustee of monies held conditionally on behalf of the Claimant pursuant to the Declaration of Trust, as mentioned in (1) above.
- (5) It was a term of the trust that the monies subject to it should only be disbursed in accordance with the provisions of clause 5 of the Agreement.
- (6) The terms of that trust were breached, in that the payments mentioned in paragraphs 49 and 50 of this judgment, but not the payments mentioned in paragraph 51 of this judgment, appear on the limited evidence before me to have been made otherwise than in accordance with those provisions.

I am conscious that there are several areas of quite technical law relating in particular to trusts and mixed funds which have not been raised before me and which I have not attempted to consider in this judgment, but might yet have a bearing, depending on how matters proceed.

Relief

53. I have considered whether any form of declaratory relief would be appropriate. Obviously, none is claimed in the Claim Form, but that would not necessarily prevent such relief from being granted in an appropriate case. Declaratory relief is always discretionary: see Wallersteiner v Moir [1974] 1 WLR 991. I do not consider this to be an appropriate case for declaratory relief, and I therefore exercise my discretion not to grant any. It would not be an appropriate case because the ambit of which any declaration which might be made is insufficiently defined; these proceedings have not been contested in any meaningful way by PSBL; it is just possible that there are in fact collusive, with a view to supporting different approaches placing pressure upon the First and Fifth Defendants to reach some kind of commercial deal; at any rate, Mr Horn states that he intends to use them at least in part for a collateral purpose, and I have not been informed in full of the terms of the supposed agreement for which purpose (among others) he invites this decision; I have been in considerable doubt whether these proceedings in their present form are not an abuse of the process of this court, though in the end I have been content to hear and decide them; in any event, the state of the evidence before me is so imperfect and restricted that I cannot be confident that any declaration I made would reflect the true state of affairs, though my decision will bind PSBL and Mr Horn as between themselves. I should mention, finally, that although Katherine Tee was a joint party to the agreement, and presumably a joint beneficiary under the declaration of trust and of the other trusts which I have found, she is not a party to these proceedings, and I have not been told why not.

54. In the circumstances, I decline to grant any substantive relief, and in fact I did not understand Mr Horn positively to ask me to do so.
55. On that footing, it seems that the claim against PSBL is at an end. I will direct that the matter be restored for directions as to what steps are to be taken, if any, to progress the proceedings against the First and Fifth Defendants.
56. As to the costs of the proceedings so far, or at any rate of the proceedings so far as they concern PSBL, I will make no order as to costs. I will however allow a limited period for submissions to be made, given that I will have made that order without hearing submissions from the parties. Subject to any such submissions, no order as to costs seems to me to be the appropriate order because neither side has won, and no relief has been granted.
57. Finally, I should say that I have not dealt with all aspects of the Claimant's case, as set out in his skeleton argument, not because I have ignored or overlooked them, but because, as he accepted during the hearing, they have no bearing on the 6 questions which I have had to consider. They include some startling propositions of law, and I would urge Mr Horn and anyone else involved this case to obtain some proper specialist legal advice before engaging in further attempts to progress matters.