Neutral citation number: [2022] EWHC 200 (Ch)

Case No: PT-2021-000540
PT-2021-000572
PT-2021-000579
PT-2021-000583
PT-2021-000620
PT-2021-000642

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY, TRUSTS AND PROBATE LIST (ChD)

The Rolls Building
7 Rolls Buildings
Fetter Lane
London

Date: Thursday 20 January 2022

Before: HIS HONOUR JUDGE HODGE QC
Sitting as a Judge of the High Court

Between:

SHAUN LEROY CAMBPELL

Claimant

-and –

CHIEF LAND REGISTRAR

Defendant

And between:

SELWYN CHARLES CAMPBELL

Claimant

- and –

CHIEF LAND REGISTRAR

Defendant

And between:

YOLANDA BLICHARZ-SZMID

Claimant

- and –

CHIEF LAND REGISTRAR

Defendant

And between:

ANDREW IAN GRAHAM

Claimant

- and –

CHIEF LAND REGISTRAR

Defendant

And between:

GORDON SOUTHWARD

-and-

CHIEF LAND REGISTRAR

Defendant

And between:

FLOYD WILSON

Claimant

- and –

CHIEF LAND REGISTRAR

Defendant

None of the **CLAIMANTS** attended or were represented

MS KATRINA YATES (instructed by the **Government Legal Department**) appeared on behalf of the **Defendant**

APPROVED JUDGMENT

JUDGE HODGE QC:

1. This is my extemporary judgment in relation to the remote hearing of six applications in six related claims proceeding in the Business and Property Courts of England and Wales under case number PT-2021-00540 and five other case numbers. The claim forms were issued on various dates between 16 June and 16 July 2021. The defendant in each case is the Chief Land Registrar who is represented before me today by Ms Katrina Yates (of counsel). There are six different claimants. In order of date issue of the claim forms, they are: Mr Shaun Leroy Campbell, Mr Selwyn Charles Campbell, Ms Yolanda Blicharz-Szmid, Mr Andrew Ian Graham, Mr Gordon Southward and Mr Floyd Wilson.

2. Applications to strike out the claims and/or for summary judgment in the defendant's favour were issued between 19 July and 30 September 2021. In each case the defendant's application is supported by a witness statement made the same day as the application was issued by Mr Malcolm Keith Abraham, who is a solicitor and senior lawyer in the Government Legal Department responsible for managing the conduct of litigation on behalf of the defendant Chief Land Registrar.

3. There are witness statements in answer from each of the six claimants. In addition, three of them, Mr Floyd Wilson, Mr Gordon Southwood and Mr Selwyn Charles Campbell, have issued their own applications for summary judgment against the defendant and supported those applications with separate witness statements. It is not clear whether those applications are formally listed before me today but if I accede to the defendant's applications to strike out the claims or to grant summary judgment in favour of the defendant thereon, then the claimants' applications for summary judgment would clearly fall to be dismissed and I should make formal orders dismissing them pursuant to the court's duty to further the overriding objective by actively managing cases and specifically invoking its power under CPR 1.4(2)(i) to deal with as many aspects of the case as it can on the same occasion.

4. In two of the claims, the defendant's application notice seeks, in addition, to strike out or for summary judgment, an extension of time for acknowledging service and for permission to participate in the proceedings because of the failure to acknowledge service in due time. The two claims in which that arises are the claims by Mr Selwyn Charles Campbell and Ms

Yolanda Blicharz-Szmid. Mr Abraham deals with those specific aspects of the case at paragraphs 20 to 24 of his witness statement in support of the application in relation to Mr Selwyn Charles Campbell and at paragraphs 23 to 28 of his witness statement in relation to the claim against Ms Blicharz-Szmid. I will deal with those discrete applications towards the end of this extemporary judgment.

5. These applications were assigned a hearing window as long ago as 21 October 2021 and notice of that hearing window was given on that day by letter. Despite that, none of the claimants appear before the court today. There is a letter signed by each of the six claimants to the court manager dated 18 January 2022. In that letter, the six claimants write in respect of the hearing of the Chief Land Registrar's six applications to strike out and/or summarily dismiss the claims. The letter continues:

> "In the interests of the overriding objection [clearly that means 'objective'], namely in seeking the matters before the court at the hearing are dealt with fairly, the court is advised that we shall rely upon representations by way of evidence already filed at the hearing. Moreover, the court is requested to give due attention to the claimants' skeleton argument and matters raised therein. Accordingly, we invite the court to proceed in determination of the Chief Land Registrar's applications in our absence pursuant to CPR 23.11(1)".

6. I have had the benefit of a detailed 23 page skeleton argument from Ms Yates for the defendant which I have pre-read. I have undertaken the pre-reading directed by Ms Yates in her skeleton by reference to the hearing bundle which extends to a PDF document of some 461 pages. In addition, there is a bundle of authorities assembled by Ms Yates which I have also looked at and which extends to some 194 pages. I have also received a seven page skeleton argument signed by each of the claimants which I have also pre-read and to which I have had regard.

7. As Ms Yates explained in her oral opening, all six claims are connected and all raise the same point of law, namely whether legal charges granted by each of the claimants over their respective properties were void for non-compliance with the requirements of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 because the respective mortgage

deeds were executed unilaterally by the mortgagor (and borrower) without the signature of the mortgagee (and lender).

8. That issue arises in the context of claims brought by the claimants as present or former mortgagors or borrowers seeking rectification of the register of the title of the respective properties specifically under paragraph 2(1)(a) of Schedule 4 to the Land Registration Act 2002 and/or an indemnity under schedule 8 paragraph 1(b) of the 2002 Act. The claims proceed by reference to an asserted need to correct an alleged mistake on the Register in terms of the recording on the Register of legal charges against the respective titles to each claimant's present or former property when, on their cases, those legal charges were void for non-compliance with section 2 of the 1989 Act.

9. The defendant Registrar invites the court to strike out or give summary judgment on all six claims on the basis that the section 2 point is bad in law and totally devoid of any merit since section 2 does not apply to mortgage deeds which, in all cases, were executed correctly as deeds, even though not executed by the respective mortgagee. In addition, in the case of five of the six claimants - that is, all but Mr Southward - they have previously sought unsuccessfully to pursue the section 2 point in this or other courts and also in the First-tier Tribunal. In addition, Mr Selwyn Campbell is the subject of a general civil restraint order dated 7 July 2021 which covers the section 2 point. It is said that, in those circumstances, by re-running those arguments, those five claimants are engaged in an abuse of the court's process on the basis that it is either manifestly unfair, or brings the administration of justice into disrepute, for those claims to be sought to be re-litigated. Ms Yates points out that all six claims have been drafted in either identical or very similar terms; and they appear to have been raised in connection with a company known as Mortgage Five Zero Limited, of which Mr Selwyn Campbell and Mr Shaun Campbell were, and in the case of one of them may still be, a director or directors.

10. Mortgage Five Zero Limited is bound by the general civil restraint order and is believed to have been engaged in corresponding on behalf of the claimants in these claims without the court's consent. That in itself is said to be a further abuse of process and a breach of the general civil restraint order.

11. By way of overview, each of the claimants, as borrowers and mortgagors, had executed a charge by deed by way of legal mortgage over their respective properties in order to secure money loans. All six claimants rely on this section 2 point in support of the contention that their respective charges is or were void, thereby entitling them to orders for alteration of the Register of Title to cancel the relevant charge on the alleged basis that it constitutes a mistake on the Register of Title and, further or alternatively, an indemnity for loss by reason of a mistake whose correction would involve rectification.

12. The claimants expressly place reliance on a decision of his Honour Judge Behrens, sitting as a Judge of the High Court, in the case of *Bank of Scotland Plc v Waugh* [2014] EWHC 2117 (Ch) and specifically the observations of Judge Behrens at paragraphs 82 to 85 of his judgment. There had also been a claim by a seventh individual, Mr Paul Campbell, but this was discontinued after the Registrar made an application to strike it out. Mr Paul Campbell was the subject of an application that I heard last Wednesday, 12 January 2022, on the application of Kensington Mortgages Limited, in claim number PT-2021-000517, to strike out a claim brought by him against his former mortgagee in which he too had sought to advance the section 2 point. For the reasons that I gave in an extemporary judgment that morning, I gave summary judgment against Mr Paul Campbell on that claim, holding that the section 2 point was bad and striking the claim out; and I also made a general civil restraint order in relation to him.

13. It is unnecessary for me to set out the detailed history in relation to each of the six claims. However, I should draw attention to certain features of previous litigation relating to the validity of particular charges over the properties of particular claimants since that is relevant both to Ms Yates's alternative abuse of process argument and also to the application which she makes in relation to Mr Shaun Campbell for a two year extended civil restraint order.

14. Specifically, Mr Shaun Campbell was the registered proprietor of a property in Croydon which was subject to a registered charge dated 1 October 2008 in favour of Bank of Scotland Plc. That bank obtained a possession order on 9 August 2019. It is an order removing that charge from the Register and/or seeking an indemnity in respect of thereof, which is the subject matter of Mr Shaun Campbell's claim in these proceedings. He advances the contention that the charge was invalid or void for want of compliance with

section 2. In consequence, and, as it seems to me, entirely parasitic upon that contention, there is a further allegation that the loan secured by the charge in favour of the bank was in some way fraudulent. Mr Shaun Campbell has pursued the section 2 point in four discrete sets of proceedings where that point has been dismissed on each occasion.

15. That litigation history is summarised in an order made by Michael Green J in claim number CH-2020-000278. By that order, Michael Green J gave Mr Shaun Campbell permission to bring an appeal from an order made in favour of the Bank of Scotland out of time, but he refused him permission to appeal and recorded that the appeal was totally without merit and he refused Mr Shaun Campbell any oral right of reconsideration. In giving his reasons for that, Michael Green J explained that those were at least the fourth set of proceedings in which Mr Shaun Campbell had sought to argue that the legal charge was void for alleged non-compliance with section 2 of the 1989 Act.

16. In June 2016, Mr Shaun Campbell had issued proceedings in the County Court at Slough seeking a declaration that the charge was void for non-compliance with section 2. A district judge had dismissed those proceedings on 14 October 2016. The appellant had sought to appeal to the circuit judge sitting in the County Court at Oxford, but he had refused permission to appeal on the papers. On Mr Shaun Campbell's request for an oral reconsideration of that refusal, Her Honour Judge Melissa Clark had again refused permission to appeal.

17. The appellant had then sought to judicially review that refusal of permission to appeal. On 17 September 2017, Ms Dinah Rose QC, sitting as a Deputy Judge of the High Court, had refused permission to bring judicial review proceedings. Mr Shaun Campbell had then sought to appeal that decision, but Newey LJ, sitting in the Court of Appeal, had refused permission to appeal as totally without merit, explaining that the underlying complaint in relation to section 2 was based on a misunderstanding of the law of mortgages and so was totally without merit.

18. Undaunted by this, on 28 August 2018, Mr Shaun Campbell had applied to the First-tier Tribunal (Property Chamber) seeking to set aside the legal charge on the same basis. By an order dated 28 November 2019, Judge Michel had struck out that claim as having no reasonable prospect of success. He gave a reasoned judgment as to why the

section 2 point was not a good one. I have been referred to the relevant passages in Judge Michel's judgment at paragraphs 20 to 25 in which he explained the basis of his reasoning. That decision was given in proceedings to which not only Mr Shaun Campbell but also Ms Yolanda Blicharz-Szmid, Mr Andrew Ian Graham and Mr Floyd Wilson (amongst others) were also unsuccessful parties. On 20 December 2019, Mr Shaun Campbell's application for permission to appeal was refused by the Upper Tribunal as having no reasonable prospect of success.

19. On 28 June 2019, the Bank of Scotland had commenced possession proceedings against Mr Shaun Campbell on the grounds of substantial arrears on his mortgage of over £32,000. Mr Shaun Campbell applied to strike those proceedings out but, as he did not attend the possession hearing on 9 August 2019, a possession order was made by a district judge in the County Court at Croydon.

20. On 29 November 2019, Mr Shaun Campbell began the proceedings which came before Michael Green J on exactly the same basis as before, namely that the legal charge was void for non-compliance with section 2. On 31 January 2020, the bank issued an application to strike out, alternatively for summary judgment, against the appellant. On 11 March 2020, Mr Shaun Campbell did not appear at the hearing before Deputy Master Linwood. No explanation was offered by him as to why he had not turned up at that hearing. The Deputy Master struck out the claim and dismissed Mr Shaun Campbell's case as being totally without merit. According to the appellant's grounds of appeal, he then made an application for permission to bring judicial review proceedings against the Deputy Master's decision. Michael Green J presumed that that had been refused because he says that the Court of Appeal on 29 September 2020 refused permission on paper. It is said that that is the reason why he had not appealed the Deputy Master's order in time. That was said by Michael Green J not to be a very good reason because Mr Shaun Campbell would have known from his earlier experience in judicial review proceedings that that was not the appropriate route to take if he was dissatisfied with an order made by the court and he should have sought permission to appeal instead. Be that as it may, Mr Shaun Campbell did not refer to any of the previous proceedings in his grounds of appeal but, rather, he rehearsed the same arguments about section 2 which had been so comprehensively rejected on a number of occasions. According to Michael Green J's reasons, "they had no merit then and they have no merit now". It was unfortunate, to say the least, that the appellant had not drawn the

previous decisions to the court's attention. Michael Green J's conclusion was that there was no basis on the merits for appealing the Deputy Master's order. Furthermore, the application, as Mr Shaun Campbell must have known from previous designations, was totally without merit; and that was why he was not to be allowed to renew it for an oral hearing. Michael Green J concluded his reasons thus:

> "This must be the end of the appellant arguing this point. Obviously, there can be no stay of the order, whatever that might have achieved".

21. An application to set aside the order of Deputy Master Linwood was dismissed by an order of Deputy Master Francis on 4 June 2021. On 18 June 2021, Falk J dismissed an application for permission to appeal from Deputy Master Francis's order as being totally without merit. She warned Mr Shaun Campbell that any further applications of the present nature would likely warrant consideration of a civil restraint order. Undeterred by that, Mr Shaun Campbell issued his present claim against the Chief Land Registrar on 16 June 2021.

22. So far as Mr Selwyn Charles Campbell is concerned, he succeeded in issuing his claim against the Chief Land Registrar on 28 June 2021 during a short gap between the expiry on 24 June 2021 of an existing civil restraint order and the making of a new general civil restraint order on 7 July 2021. It is unnecessary for me to refer to the detail of all the other claims. I should, however, observe that Mr Graham seeks an indemnity only based on the challenge to a historic charge over a property he no longer owns because his mortgagee, the Co-operative Bank Plc, had exercised its power of sale under the relevant charge and had transferred the property to third parties, meaning that he no longer has any interest in the relevant property.

23. Mr Southward is the only claimant who is not the subject of any prior judicial determination on the section 2 point. Mr Wilson, like Mr Graham, seeks an indemnity only, based on impugning an historic charge over property he no longer owns because the relevant mortgagee, then known as Paratus AMC Limited, had exercised its power of sale pursuant to the charge on 19 March 2020 and had transferred the property to a housing company which has sold on again to a property management company which is now the registered proprietor.

24. Mr Wilson is another of the litigants who had attempted to set aside the charge in the proceedings in the First-tier Tribunal based on the section 2 point, but his application was struck out by Judge Michel. He too relies not only on the section 2 point but alleges fraud.

25. Ms Yates has reminded me of the court's power to strike out a claim if it appears to the court that the statement of case discloses no reasonable grounds for bringing the claim, or is an abuse of the court's process, or is otherwise likely to obstruct the just disposal of the proceedings. She rightly submits that the court may conclude that there are no reasonable grounds for bringing a claim where it is incoherent, or makes no sense, or the facts disclose no legally recognisable claim.

26. Ms Yates points out that the categories of abuse of process are not closed and include matters such as bringing vexatious proceedings in respect of the same subject matter to harass a defendant more than once (which is not the case here because the Chief Land Registrar has not been subject to previous legal proceedings brought by these claimants). But it also extends to collateral attacks on previous decisions, even though the parties are not strictly bound by the doctrine of *res judicata*, but where a claimant is seeking to re-litigate the same issues in relation to a different party where that would be manifestly unfair to a party in the later proceedings and/or would bring the administration of justice into disrepute.

27. Ms Yates submits that that is the case here because, having failed directly in a challenge to the validity of various legal charges against the chargee, precisely the same contentions are now being advanced against the Chief Land Registrar who had registered those legal charges against the titles to the relevant properties. Ms Yates also points out that if the court strikes out a claim and concludes that it was totally without merit, then that fact must be recorded in the court's order; and the court must, at the same time, consider whether to make a civil restraint order. 'Totally without merit' involves concluding that the claim is not only bound to fail but also that no rational argument could be raised in its support.

28. As an alternative to striking out a claim, by CPR 24.2, the court may give summary judgment against a claimant on the whole of the claim if it considers that the claimant has no real prospect of succeeding on the claim and there is no other compelling reason why the case should be disposed of at a trial. CPR 24.2 is designed to dispose of cases where the prospects of success are false, fanciful or imaginary. To successfully resist an application by a

defendant for summary judgment, the claimant must demonstrate that his case is more than merely arguable. If a case is bad in law, a claimant will have no real prospect of succeeding on his claim.

29. Ms Yates points out that, in so far as allegations of fraud are made against the mortgagees and lenders in five of the claims, the Registrar is not the proper party to such allegations and, therefore, they should fall to be struck out for that reason alone. I accept that submission. I also find that the allegations of fraud are parasitic upon, and would fall with, the dismissal of the section 2 point if it has no merit.

30. I, therefore, turn to address the section 2 point which lies at the heart of all six of the claims for rectification and indemnity. That involves the claimant in establishing that there is some mistake on the Register of Title. Ms Yates accepts that, in theory, a registered void disposition would be a mistake on the Register which would be susceptible to rectification if the entry was still extant. However, she submits that there are no reasonable grounds for, and no real prospect of the claimants, establishing that the registered charges in question are void because it is well-settled that the section 2 point is bad in law.

31. Each of the claims hinges on the execution of the relevant mortgage deed by the borrower (and mortgagor) alone. The contention for each of the claimants is that their mortgage offer and mortgage deed, and the documents incorporated within the latter, together comprise a contract to which section 2(3) of the 1989 Act applies so that the mortgage deed was invalid because it was not executed by the mortgagee as well as the mortgagor. Ms Yates submits that that is simply wrong in law: the claimants' respective mortgage deeds are all standard charges by deed by way of legal mortgage and, as such, they are not caught by section 2 at all.

32. Section 2 refers to contracts for the sale or other disposition of an interest in land. It is well-established that this expression does not apply to dispositive documents that actually create or transfer legal estates, such as a legal charge by way of legal mortgage. That was specifically confirmed by Lord Neuberger MR in *Helden v Strathmore Limited* [2011] EWCA Civ 542, which is reported at [2011] 2 BCLC 665. In particular, at paragraphs 27 to 28, speaking with the agreement of Smith LJ and Elias LJ, Lord Neuberger MR said this:

"27. Mr Helden's case on section 2 is hopeless. It proceeds on a fundamental misunderstanding of the reach and purpose of that section, a misunderstanding, it is fair to say, which appears to be not uncommon. Section 2 is concerned with contracts for the creation or sale of legal estates or interests in land, not with documents which actually create or transfer such estates or interests. So a contract to transfer a freehold or a lease in the future, a contract to grant a lease in the future, or a contract for a mortgage in the future, are all within the reach of the section, provided, of course, the ultimate subject matter is land. However, an actual transfer, conveyance or assignment, an actual lease, or an actual mortgage are not within the scope of section 2 at all.

28. As is spelt out in its opening words, section 2 is concerned with 'a contract for the sale or other disposition of an interest in land'. Its purpose is also clear from the fact that it replaced section 40 of the Law of Property Act 1925, and from the contents (and indeed the title) of the interesting and full Law Commission report which initiated it - *Transfer of Land: Formalities for Contracts for sale etc. of Land (Law Com. No. 364)*. The section was directed to tightening up the formalities required for contracts for the creation or transfer of interests or estates in land and it was not concerned with documents which actually create or transfer legal estates or interests in land ..."

33. The charges signed by each of the claimants were all created by mortgage deeds and therefore they squarely fall within the principles set out by Lord Neuberger MR. In refusing permission to appeal in the earlier case of *Eagle Star Insurance Company Limited v Green* [2001] EWCA Civ 1389 at paragraph 16 Mummery LJ considered a submission that, since there was no preceding contract for the creation of the mortgage in issue, the contract must be in the deed. Mummery LJ said:

"In my judgment, that is a misunderstanding. A deed is a different kind of instrument from an ordinary contract; and it is not a requirement of the execution of a deed that it should comply with the requirements of section 2 of the 1989 Act. That is clear. Section 1 refers throughout to deeds, section 2 refers throughout to contracts, clearly recognising that they are two different legal concepts".

34. In response to that, the claimants, in their particulars of claim, place express reliance upon observations of his Honour Judge Behrens in the case of *Bank of Scotland Plc v Waugh*

(previously cited). The specific passage relied upon is at paragraphs 82 to 85. In that passage, Judge Behrens was addressing an equitable mortgage. At paragraph 85, he said, in terms, that the relevant document was not executed as a deed and thus did not take effect as a legal charge. However, it was signed by the parties and did contain all the terms that had been agreed and thus took effect as an equitable mortgage.

35. As Ms Yates points out, that case concerned the creation of an equitable mortgage through a defectively executed legal mortgage. It is no authority for the proposition that both the mortgagor and the mortgagee must execute a charge by deed by way of legal mortgage. Thus the case is not relevant to the present situation and, in any event, it cannot undermine the binding Court of Appeal authority concerning the effect of section 2 which demonstrates that the point sought to be advanced by the claimants is wholly unarguable. Indeed, Ms Yates points to earlier passages in the *Waugh* case which she rightly submits entirely undermine the claimants' case. At paragraph 46, Judge Behrens recorded that Mr Waugh in that case had repeated a point that had been rejected both by Judge Walton and Lloyd LJ. For the reasons given by Lloyd LJ, the point was said to be totally without merit as well as being, in addition, *res judicata*. The reasons why Lloyd LJ had rejected the section 2 point and certified it as totally without merit were set out at paragraph 37 of Judge Behrens's judgment:

> "The contention that the agreement between the parties represented by the facility letter is void because it does not comply [with section 2 of the 1989 Act] is wrong. The section only applies to contracts for the sale or other disposition of an interest in land. The facility letter is not such a contract. The fact that security by way of a legal charge over property was required as a condition of drawing down on the facility … does not make it an agreement for the creation of a charge over land."

A legal charge by way of deed is a dispositive document. It creates a legal charge over the land. It is not an agreement to create such a charge, as in the case of an equitable mortgage which therefore requires to be compliant with section 2 of the 1989 Act. It is an actual disposition and need only be executed by the party who effects the disposition - in that case by the creation of a charge.

36. How do the claimants seek to meet that point? They say that all the mortgage deeds incorporate agreements to create legal mortgages by reference to the mortgage conditions. Therefore, the contracts are intended to be signed as deeds. The lenders, however, never signed any contracts and, in consequence, the mortgages are void by virtue of section 2(3) of the 1989 Act. Reference is made to paragraphs 82 to 85 of Judge Behrens's judgment in *Waugh*.

37. The claimants dismiss Ms Yates's submission at paragraph 52 of her skeleton argument that the claimants' reliance on *Waugh* is misplaced and takes them no further. They submit that *Waugh* is authoritative and is "most relevant in the sense that, both mortgagor and mortgagee sign the charge by deed by way of legal mortgage purely on the basis of the deed's incorporation of an equitable mortgage, being a specifically enforceable contract to create a legal interest in land. Thus, under that circumstance, there is one document and the basis of a legal mortgage, defective or otherwise, is an equitable mortgage and the deed is merely an incorporated document of that contract." *Helden v Strathmore* is said to be "of no relevance, since the judgment only applied to the deed in that case that does not incorporate an agreement to create a legal interest in land". Since the defendant provides no other reasonable grounds of defence on the point, their strike-out applications cannot succeed and should be struck out.

38. I am afraid that I must apply to these submissions the same epithet that Lord Neuberger applied to the submissions in *Helden v Strathmore Limited.* They are simply a nonsense and they are "hopeless". They confuse an agreement to create a mortgage, which does need to comply with section 2, with the actual creation of a mortgage itself, which merely requires compliance with the law regulating and governing the execution of a deed.

39. In each case, the legal charge on which the claimants' case is founded was a legal charge, created by deed, which therefore did not need to be executed by the mortgagee. The claimants' case is founded on a hopeless misunderstanding of the applicable law. Once that is understood, the claimants' second ground - that the agreements for the mortgages were false representations that could never create valid mortgages and the suggestion that the lenders were thereby committing fraud - falls to the ground because there is no solid foundation for it. These were valid legal mortgages.

40. For those reasons, I accept Ms Yates's submission that there are no reasonable grounds for bringing any of these claims. They should be struck out under CPR 3.4(2)(a); and they should also be summarily dismissed under CPR 24.2 because they are bad in law and have no real prospects of success. I am satisfied that the section 2 point is so well-established as wrong that it is bound to fail and that no rational argument has been, or could be, raised in its support. I am, therefore, satisfied that these claims are totally without merit.

41. Further, in the cases of Mr Graham and Mr Wilson - who are no longer registered as proprietors of the relevant properties - the claims are, in any event, totally without merit because there is no longer any mistake on the Register of Title which requires to be corrected. Rectification does not apply to correct a historic mistake on the Register that is no longer current. It follows that any claim for an indemnity must fail. The mistakes which Mr Graham and Mr Wilson both erroneously assert were never rectified when they were the proprietors of the properties; and, as they no longer own those properties, and the impugned charges have already been discharged upon sale by their respective mortgagees, the charges no longer exist and are no longer capable of constituting mistakes, either for the purposes of rectification or for the grant of an indemnity.

42. Further, and as an alternative basis for striking out the claims, I accept the submission that in five of the six cases, excluding that of Mr Southward, the pursuit of the claims is an abuse of the process because each of those claimants has already pursued the section 2 point before various courts and/or the First-tier Tribunal and they have resoundingly failed. Indeed, so extensive have Mr Selwyn Campbell's efforts to persist in and pursue the section 2 point been that they have led to the making of a general civil restraint order in relation to him. Even though the Registrar was not a party to any of those earlier proceedings, the dismissal of the section 2 point, and the persistent refusal to accept that the charges are valid, is something that has been conclusively determined as between the claimants and their respective lenders and mortgagees.

43. In the case of Mr Campbell, a possession order has been obtained on the footing that the charge is valid; and, in the case of Mr Graham and Mr Wilson, their respective mortgagees have already acted on the validity of the charges by exercising their respective powers of sale. In all five cases, other than that of Mr Southward, the attempts to re-argue

the section 2 point are an obvious collateral attack upon the previous decisions adverse to the claimants. They are seeking different relief against a new defendant; but they seek to do so by mounting the same challenge to the validity of the charges which has already been rejected in proceedings between the claimants and the chargees. It is the chargees who would be the proper defendants to the rectification claims. I accept that it is manifestly unfair to the Registrar to bring these claims and to pursue them; and to allow the claimants to do so would bring the administration of justice into disrepute. I am entirely satisfied that it is an abuse of the court's process for these claims to be pursued. The involvement of Mortgage Five Zero Limited, on behalf of the claimants, in apparent contravention of the general civil restraint order which applies to it, reinforces the impression that, whether viewed collectively or individually, these claims are an abuse of the court's process. Mortgage Five Zero Limited has written to the court enclosing material on which these claimants wish to rely.

44. I have already mentioned that in relation to two of the claims, that brought by Mr Selwyn Charles Campbell and that brought by Ms Yolanda Blicharz-Szmid, it is necessary for the defendant to seek a retrospective extension of time for responding to the claims and permission to participate in them. As I have mentioned, the reasons for that are explained in paragraphs 20 to 24 and 23 to 28 of the witness statement made by Mr Abraham in response to the claims of Mr Selwyn Campbell and Ms Yolanda Blicharz-Szmid respectively. Those claims did not immediately come to the attention of the defendant Registrar, meaning that the acknowledgment of service and the applications and supporting evidence were served outside the 14 day period prescribed by the Civil Procedure Rules.

45. In summary, Ms Blicharz-Szmid appears to have posted the proceedings to the Land Registry, but there is no trace of them ever having been received. That is believed to be due to delivery disruptions at Royal Mail. The claim by Ms Blicharz-Szmid first came to the Registrar's actual notice about a month later when Mortgage Five Zero Limited made a without prejudice offer to the Registrar on their client's behalf. The proceedings were not received until Mortgage Five Zero emailed them to the Registrar. He then acknowledged service, and promptly made the application for relief less than a week later.

46. In the case of Mr Selwyn Campbell, his claim was posted to the Land Registry and received there but, because it did not contain an identifying title number, it was mis-filed, along with similar correspondence relating to a different title, and was subsumed into that

lead title without raising any internal new attachment flag to trigger any review. Mr Selwyn Campbell's mortgagee had notified the Registrar that it was aware of a claim, but this filing error meant that staff concluded that it had not yet been served. The details of the claim were not unearthed until about two to three months later when service was promptly acknowledged; and the application for relief was made equally promptly.

47. Ms Yates refers me to the well-known three stage approach in *Denton v White* [2014] 1 WLR 3926 at paragraph 24. She invites the court to find that it would further the overriding objective to grant the relief sought. Addressing the three stage test: First, neither breach is serious and significant because it has not imperilled any hearing date or caused prejudice to either claimant, or otherwise disrupted the normal conduct of the litigation. The applications for relief were made promptly after the errors were discovered, and the two claimants were put on ample notice of the Registrar's position by the full statements which accompanied the two strike-out and summary judgment applications in the two relevant claims. Secondly, the Registrar's non-compliance with the prescribed timetable was neither intentional nor wilful in either case, but was caused by a combination of human and system errors. Thirdly, looking at all the circumstances, it would be unjust if two claims that are an abuse of process and are totally without merit were to be allowed to proceed, or to succeed, purely due to procedural oversights either by a third party, in the person of Royal Mail, or by staff employed by the Registrar, in circumstances where they have caused no prejudice. That injustice would be even more serious in the case of Mr Selwyn Campbell because, had it not been for the short gap between the currency of the two general civil restraint orders, he would not have been permitted to proceed with his claim at all.

48. For all of those reasons, I will strike out all six claim forms and the details of claim pursuant to CPR 3.4(2)(a). I will also summarily dismiss each claim pursuant to CPR 24.2. I will record that each of the six claims was totally without merit.

49. Having made those totally without merit findings, it seems to me to follow automatically that the three applications for summary judgment brought by Mr Floyd Wilson, Mr Gordon Southward and Mr Selwyn Campbell should also fall to be dismissed; and that I should record separately that they too were totally without merit. I then have to consider whether I should make any civil restraint orders.

50. There is already a general civil restraint order in relation to Mr Selwyn Campbell. That order still has some 18 months or thereabouts to run. Whatever the position may be at the end of that order, it does not seem to me that it would be appropriate to make any further civil restraint order in relation to Mr Selwyn Campbell.

51. The position of Mr Shaun Campbell, however, is different. I am satisfied, as exemplified by my recital of Michael Green J's findings, that Mr Shaun Campbell is a serial and vexatious litigant who has persistently issued claims and made applications founded upon the wholly unmeritorious section 2 point which have, therefore, been totally without merit. He was warned of the risks of his conduct by Falk J and, yet, he has persisted in it to the extent of issuing this claim.

52. I am satisfied that it is appropriate to make an extended civil restraint order in relation to him which, so far as material, mirrors the civil restraint order that is current against Mr Selwyn Campbell and Mortgage Five Zero Limited. I consider that, given the length and history of this litigation, an extended civil restraint order for the full maximum period of two years is appropriate. Unless there are any matters, other than costs, that concludes this extemporary judgment.
