

Neutral Citation Number: [2023] EWHC 3113 (Ch)

Case No: PT-2023-000875

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

Rolls Building  
Fetter Lane  
London, EC4A 1NL

30 November 2023

**Before :**

**MRS JUSTICE BACON**

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**Between :**

**Barclays Bank UK Plc**  
**- and -**  
**(1) Shaun Richard Terry**  
**(2) Rachael Jayne Terry**

**Claimant**

**Defendants**

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**Stephanie Tozer KC and Tricia Hemans** (instructed by **Simmons & Simmons LLP**) for the  
**Claimant**

**James Hall and William Golightly** (instructed by **Moore Barlow LLP**) for the **Defendant**

Hearing date: 30 November 2023  
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**APPROVED JUDGMENT**

## MRS JUSTICE BACON:

### Introduction

1. This is the latest of a series of hearings to resolve the mistaken discharge, by the claimant, of over 5,000 registered legal charges on properties due to an internal process error. The matter has been before the court on three previous occasions. For case management purposes, four lead defendants were selected as representatives of the entire cohort of parties affected by the claimant's error. The first and second of those defendants have now been removed, leaving Mr and Mrs Terry as the representative defendants. The claimant has paid and is continuing to pay for Moore Barlow LLP to provide independent legal advice to all of the defendants.
2. Following a hearing before Green J on 18 October 2023 resulting in directions for an expedited hearing of the claimant's summary judgment application, HHJ Matthews gave summary judgment on 23 October 2023 in favour of the claimant in respect of the charge on the property of Mr and Mrs Terry. The judge made a declaration that the discharges of the charge had occurred by mistake, and ordered that the discharge of the charges should be rescinded and the Land Registry title corrected to show that the charge was still subsisting in relation to the property constituting the security for that charge.
3. The judge then gave directions for the other affected owners and the interested parties to be notified and given an opportunity to advance arguments as to whether there were any particular reasons in their cases why the same orders should not be made in respect of the charges on their properties. The properties were, for these purposes, split into various different categories on a schedule of properties (**the Schedule**). There are now four such categories with a proposal for a fifth category to be added.
4. Parts 1 and 2 of the Schedule comprise 3,898 properties and are those where the titles are straightforward, with no third party interests which needed to be addressed. The properties on those parts of the Schedule were dealt with by HHJ Keyser KC on 14 November 2023, making an order similar to that made by HHJ Matthews.
5. Part 3 now consists of 936 properties where there is a need to analyse potential priority issues. These are the subject of today's hearing. Certain titles which cannot be dealt with today have been moved to Part 4 of the Schedule and will be dealt with at a hearing on 20 December 2023. The proposed Part 5 of the Schedule seeks to address a small number of titles which have proven problematic in terms of notifying relevant owners and/or third parties, or where there are other unresolved issues, and in relation to which the way forward will continue to be the subject of discussions between the parties. Titles moved to Part 5 of the Schedule will not be addressed at the December hearing.
6. The parties are now, and subject to some last-minute discussions before this hearing, in agreement as to the order which should be made at this hearing for the remaining Part 3 cases.

### Orders sought at this hearing

7. For the purposes of this hearing, the Part 3 properties have been divided into seven sub groups, depending on what specific order is sought. The different draft orders have been referred to as orders OO1A, OO2, OO3, OO6, OO7, OO8 and OO9.

8. The largest category consists of 856 titles where order OO1A is sought. The order is in substance the same as the order made in respect of the Parts 1 and 2 properties. The only difference is that the Part 3 properties subject to this order have various different types of restriction against the properties benefiting third parties, but in respect of which the claimant does not seek any priority.
9. The other orders cover 80 properties for which the claimant does seek priority over some but not all of the interests on the register as follows:
  - i) OO2 (7 titles): priority over all charges on the title;
  - ii) OO3 (3 titles): priority over all leases on the title;
  - iii) OO6 (1 title): priority over all charges, interests protected by notices and restrictions (other than form A restrictions);
  - iv) OO7 (18 titles): priority over all restrictions (other than form A restrictions);
  - v) OO8 (50 titles): priority over all charges and restrictions (other than form A restrictions);
  - vi) OO9 (1 title): priority over all interests protected by notice and all restrictions (other than form A restrictions).
10. There is no dispute that in principle, orders can be made at this hearing rescinding the discharges over the properties in issue. The matters for determination at this hearing concern various specific issues arising out of the fact that the Part 3 cases are those in which there are relevant interests of third parties, in respect of some of which, as just outlined, the claimant is claiming priority.
11. There are six specific issues which I will address in turn.

**(1) Whether the evidence of service on the owners of the Part 3 properties is satisfactory**

12. The claimant sent out letters, in the form of Appendix C to the order of 23 October 2023, to the owners of the Part 3 properties. The order provided for this to be done by 5 pm on 6 November 2023. That was extended by agreement by one day, to 5 pm on 7 November 2023. The letters directed the recipients to a data room containing the case papers relevant for the order sought in their particular case.
13. Evidence of service is set out in the third witness statement of Ms Ambrose, an employee of the claimant, and the first witness statement of Mr Hayes, an employee at City Sprint UK Ltd, both dated 28 November 2023. The majority of borrowers were served by post, but a small proportion were served by email because the claimant did not hold a valid UK postal address for them. As Ms Ambrose has explained, where the claimant had been informed that a sole proprietor of the property had died, the letter was sent to the personal representative of that person.
14. Ms Tozer KC explained at the hearing that an issue has arisen in relation to a small batch of the letters posted relating to 15 owners, as a result of which the relevant titles have been removed from Part 3 and will be dealt with under Parts 4 or 5 in due course.
15. I am satisfied that the evidence of service on the owners of the remaining Part 3 properties is satisfactory, and note that this is also now agreed by the defendants.

**(2) Whether the evidence of service on other interested parties is satisfactory**

16. The 23 October 2023 order required the claimant to send a letter in the form of Appendix D to that order, to “any person with an interest in any of the properties in Part 3 over whom the claimant claims priority or who should otherwise be notified of the application” to the address held by the Land Registry as that person’s address for service.
17. In total, 960 letters were sent to interested third parties. Ms Hunter-Yeats, a partner at the claimant’s solicitors Simmons & Simmons, explains in her witness statement dated 28 November 2023 that those letters were sent either to the address held by the Land Registry; or the company addresses listed at Companies House, the SRA website and/or the FCA website, if the third party was a company; or the address provided on the relevant entity’s website, where the third party was a government department, housing association, solicitors’ firm, trust or registered society; or the Bona Vacantia department if the entity was a dissolved company. The claimant’s solicitors considered that letters sent to these alternative addresses would be more likely to come to the attention of the relevant decision maker than if the letters were sent to historic addresses held by the Land Registry. The defendants agree with that approach.
18. I consider that this was an appropriate course to take, and therefore vary the order of 23 October 2023 to permit service at those alternative addresses.
19. In respect of seven titles, letters were sent to the relevant third parties as per the order to the addresses provided on the Land Registry title, but were returned to sender by Royal Mail. For those individuals, the claimant has no other address that it can write to, as explained by Ms Hunter-Yeats. I am satisfied that the claimant has in those cases complied with the order and cannot reasonably be expected to take any other steps to bring this matter to the attention of the relevant third parties.
20. There were also letters in relation to various titles that were returned to sender in respect of third parties that were not individuals. In relation to those:
  - i) For three of these, the claimant is not aware of an alternative address. I am satisfied that in those cases, as for the individuals just addressed, the claimant has complied with the order of 23 October 2023.
  - ii) The parties have agreed to move the remaining titles in that category to either category OO1A, where the claimant does not claim priority and in respect of which no letter needs to be sent, or Parts 4 or 5 of the schedule, which are not being dealt with today.
21. There are also three titles where the relevant third party, who is a supposed beneficiary of a restriction, cannot be identified for various different reasons. In relation to those, it is appropriate to make an order simply specifying that the service on the relevant persons is not required.
22. Some further points of detail have been the subject of comment by Ms Tozer and Mr Hall at the hearing today, which I am satisfied do not undermine the orders to be made. I am therefore satisfied that the evidence of service on the interested third parties in relation to the titles remaining in Part 3 is satisfactory. Again, that is now agreed by the defendants.

**(3) Whether the claimant is entitled to priority in the cases where it has claimed priority**

23. The claimant's analysis of its priority rights is set out in a note and also explained in the third witness statement of Ms Turner-Inskip, a partner in the real estate department of Simmons & Simmons. The defendants have not taken issue with this analysis as a matter of principle, save for the specific question of manorial rights which affected four titles. The claimant has taken the view that it will not claim priority over those interests, and those four titles have therefore been moved to the OO1A orders.
24. Mr Hall explained that Moore Barlow had scrutinised a sample of the titles of the Part 3 borrowers falling under the remaining orders, OO2 to OO9, to confirm if the orders and priorities sought by the claimant in those cases were appropriate. That exercise gave the defendants comfort that the claimant's categorisation and orders sought were appropriate in the sample cases and more generally.
25. The defendants have also investigated numerous other cases where, for various reasons specific to those cases, it has now been agreed to make amendments to the schedules, for example, by moving certain titles to Parts 4 or 5, or to the OO1A order for Part 3. These have been resolved by agreement with the claimant.
26. I am satisfied that there has been a comprehensive and diligent examination of the claimant's claims to priority in relation to the titles falling under orders OO2 to OO9. With the various amendments made by the parties to the Schedule, it is now common ground that the claimant is entitled to priority in the cases where it is claimed, and it is therefore appropriate to make the orders at OO2 to OO9.

**(4) Whether there are any unresolved objections**

27. Various of the owners and interested third parties have contacted either Moore Barlow or Simmons & Simmons with questions or concerns. Most of those simply wanted further information. A few raised objections which have been addressed by the claimant. These included some borrowers who have claimed losses arising from the mistaken discharge of their charges. The orders in relation to those borrowers contain an undertaking from the claimant that in the event that the relevant borrowers can prove they have suffered loss as a result of the mistaken discharge of the relevant charges, the claimant will compensate them. The relevant orders are order OO1A (in relation to four titles) and OO8 (in relation to one further title).
28. There was one outstanding title in relation to which Moore Barlow had proposed that the title should be moved to Part 4 of the Schedule, due to concerns raised by the proprietor. The claimant did not agree to that proposal and considered that the proprietor did not have any valid ground to object to the order sought. The proprietor has now confirmed that they do not object to the order being made. That title is therefore included in Part 3 under order OO1A and is not opposed by the defendants.

**(5) The application for a declaration that there is not a "disposition", etc.**

29. The draft orders state that the setting aside of the discharge of a charge is not a "disposition", "transfer", "lease", "charge" or "sub charge", requiring the chief Land Registrar to apply any restriction registered against the titles listed in the appendices to the relevant orders. This provision is to address the potential problem that some of the titles in Part 3 are subject to restrictions which

would prevent registration of certain dispositions of the properties, unless specific conditions are complied with.

30. There is a question whether, as a matter of construction, the draft orders would indeed amount to dispositions that trigger those restrictions. Standard form restrictions are governed by the Land Registration Rules 2003 Schedule 4, and may be triggered by a disposition, transfer, lease, charge or sub charge. There is no statutory definition of the word “disposition” in the Land Registration Act 2002 or the Land Registration Rules of 2003, and I have therefore been referred to the principle set out in the *Cornerstone Telecommunications Infrastructure v Compton Beauchamp Estates* [2002] UKSC 18, §§102 *et seq*, that the interpretation of a word in a statute which is not defined, and which appears in different statutory provisions, must have reference to the context in which it appears and the purpose of the provisions in which it is used.
31. As HHJ Keyser commented at §12 of his judgment of 14 November 2023, and as is common ground between the parties of this hearing, on the basis of that principle any suggestion that the orders for rescission and consequent alteration of the register would constitute a disposition which prevented registration would be incoherent, since the duty of the Chief Land Registrar under Land Registration Act 2002 Schedule 4, §2(2), to give effect to the court’s order for alteration of the Land Register, would then conflict with the restriction preventing that alteration from taking place. I do not, therefore, consider that it would make sense in the context of the relevant statutory provisions for a “disposition” (or the related concepts of “transfer”, “lease”, “charge” or “sub charge”) to be construed as including the present orders for rescission and alteration of the register.
32. For the avoidance of doubt, however, it seems sensible to include the proposed provision in the orders. That is the approach which HHJ Keyser also adopted, and the defendants are in agreement with that approach.

#### **(6) The orders sought**

33. I am satisfied that the draft orders sought properly reflect the points that I have just addressed.
34. As a final point and for completeness, I note that the orders provide by agreement that the claimant shall pay the defendants’ costs since the hearing of 14 November 2023 and up to and including this hearing, to be assessed on the standard basis if not agreed, and the orders also record the claimant’s undertaking not to add its cost of these proceedings, or its cost of rectifying the mistaken discharge of its charges more generally, to the mortgage accounts of any of the borrowers within the class of represented parties.

#### **Conclusion**

35. I will therefore make the orders as sought and agreed by the defendants.