Case No: D00BY236
NCN: [2019] EWHC 2243 (Ch)

IN THE HIGH COURT
BUSINESS & PROPERTY COURTS IN LEEDS
CHANCERY DIVISION (ChD)

The Courthouse, 1 Oxford Row
Leeds, LS1 3BG

Date: 26th June 2019
Start Time: **1553** Finish Time: **1722**

Before:

THE HONOURABLE MR JUSTICE BARLING

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Between:

PROMONTORIA (HENRICO) LTD	**Claimant/ Respondent**
- and –	
JOHN RICHARD MELTON	**Defendant/ Appellant**

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Mr James McWilliams (instructed by Addleshaw Goddard**)** appeared on behalf of the Respondent
Mr John Pugh (instructed by Joanna Connolly Solicitors**)** appeared on behalf of the Appellant

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JUDGMENT

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2nd Floor, Quality House, 6-9 Quality Court, Chancery Lane, London WC2A 1HP.
Telephone No: 020 7067 2900. Fax No: 020 7831 6864 DX 410 LDE
Email: info@martenwalshcherer.com
Web: www.martenwalshcherer.com

MR JUSTICE BARLING:

Introduction

1. This is an appeal pursuant to permission given by Andrews J in respect of one of several grounds of appeal. The Appellant is John Richard Melton, represented by Mr Pugh of counsel. The Respondent is Promontoria (Henrico) Ltd ("Promontoria"), represented by Mr McWilliams of counsel.

2. The order appealed was made on 6 September 2018 by Mr Recorder Miller, sitting in the County Court at Barnsley. He entered judgment for Promontoria against Mr Melton and ordered possession of six or seven properties in Barnsley. Mr Melton was required to pay Promontoria £367,233.09, said to have been owed by Mr Melton to Promontoria under a facility letter dated 15 June 2011.

3. The properties subject to the possession order were properties over which Promontoria successfully claimed to hold security by way of legal charges.

4. Under the single ground of appeal for which permission was given, the Appellant contends that the Recorder was wrong to find that the rights of Clydesdale Bank plc (trading as Yorkshire Bank) under the legal charges and facility agreement to which I have referred, had been the subject of a valid legal assignment to Promontoria under section 136 of the Law of Property Act 1925.

The facts

5. The facts are fully set out in the judgment of the court below and, therefore, I will refer to them only briefly in so far as relevant to the single ground of appeal.

6. Under the facility letter of 15 June 2011 Yorkshire Bank (to which I will refer as "the Bank" to distinguish it from the alleged assignee, Promontoria) made available to the Appellant a loan facility of about £347,000. There had already been a number of loan facilities by the Bank to the Appellant, and the 2011 facility replaced them. Associated with the facility were the legal charges granted by the Appellant over each of the properties in question, as security for the borrowing.

7. Under the 2011 facility agreement, the loan was repayable in instalments by what the agreement termed the "final maturity date". The monies were drawn down by the Appellant in 2011. The effect of the agreement was that the loan fell due for repayment no later than 30 June 2014. There was a default by the Appellant on that repayment obligation.

8. I have been shown a letter of 28 September 2016 from the Bank to the Appellant informing him that the facility letter and the legal charges were being sold to Promontoria on 28 October 2016. It is the Respondent's case on this appeal – as it was below -- that there was an assignment of the Bank's rights under the facility agreement and the legal charges to Promontoria by a deed of assignment bearing that date.

9. It is common ground that on 1 November 2016 a company called Engage, which was acting on behalf of Promontoria with respect to this and other loan facilities, wrote to

the Appellant stating that there had been a sale or assignment of the facility agreement and the related security agreements to Promontoria by the Bank. It is also common ground that the Bank executed TR4 applications, effectively requesting the registration of Promontoria as the legal proprietor of those legal charges at HM Land Registry. I am told that on 3 November 2016 Promontoria was, in fact, registered as legal proprietor.

10. There is no dispute that on 14 November 2016 Promontoria wrote to the Appellant, referring first to the facility agreement that had been entered into between the Bank and the Appellant on 15 June 2011, and then referring to what was called an "assignation agreement" dated 5 June 2015 between National Australia Bank Ltd and Clydesdale Bank plc as "the assignors" and Promontoria as "assignee". Under a heading "Background and Interpretation", the letter continued:

> "In accordance with the terms of the facility agreement and pursuant to the terms of the assignation agreement, the assignors transferred all of their rights under the facility agreement and certain additional finance documents, including associated guarantee and security documentation, to the assignee."

Various other references were made to the facility agreement and to the assignation agreement.

11. It is accepted that the wrong date was referred to in the reference to an "assignation agreement" dated 5 June 2015, because the date of the assignment apparently intended to be referred to was 28 October 2016, as set out in the earlier letter of 1 November 2016.

12. At some point thereafter, probably on about 13 January 2017, the Appellant was provided with a copy of the "assignation agreement" relied upon by Promontoria in this litigation. This document, the deed of assignment, bears the correct date of 28 October 2016.

13. Further correspondence took place between Promontoria and the Appellant in relation to the Appellant's default under the terms of the facility agreement. On 30 January 2017, Promontoria appointed Law of Property Act receivers over the properties which were subject to the legal charges. There were demands for repayment of the loan, but repayment was not made.

The proceedings and judgment in the court below

14. The action that led to the hearing in the court below was commenced against the Appellant on 19 September 2017. This resulted in a trial in August and September 2018.

15. A number of matters were dealt with by the Recorder in the course of his judgment, but those with which this appeal is concerned are within a relatively narrow compass. They are essentially comprised in paragraphs 31 to 40 of the judgment. I should indicate briefly certain findings which are of relevance for the appeal.

16. As I have said, the essential issue in the appeal is whether there was any effective legal assignment, and, in particular, whether the Respondent was in a position to, and did, prove that there was an effective absolute assignment of the Appellant's facility and legal charges to Promontoria.

17. The Recorder held in paragraph 34 of the judgment that there was an absolute assignment of those assets by the Bank to Promontoria. A number of points were taken by Mr Pugh then, as they are now. In regard to one of those points, the Judge held that there were good reasons for the signatures of the representatives of the assignor (the Bank) on the deed of assignment to be redacted. At paragraph 37 of the judgment he expressed himself satisfied that the deed had been signed by the assignor, and that the other requirements of section 136 of the 1925 Act, namely that the assignment be in writing under the hand of the assignor, had been met.

18. As to the issue (also raised in this appeal) whether a valid notice of assignment for the purposes of section 136 was ever given, the Recorder held that the Appellant had received notice before the proceedings had begun. In particular, he referred to the letter from Engage of 1 November 2016 and to the fact that the Appellant had received a copy of the deed of assignment itself at some point in January 2017. In the same paragraph of his judgment (paragraph 39), he also mentioned an e-mail of 11 January 2017. However, I do not believe that I was taken to this. The Recorder made a general finding to the effect that the Appellant was never in any doubt but that Promontoria had taken over from the Bank the loan and other securities associated with it.

19. In terms of evidence, there was before the Recorder a witness statement and also, as I understand it, oral evidence from a number of witnesses, including a Mr David Potter. Mr Potter was a manager of the commercial loan servicing division of the company called Engage to which I have referred, and which acted for Promontoria. In paragraph 15 of his witness statement, Mr Potter said:

> The assignment was effected pursuant to the terms of a deed of assignment dated 28th October 2016. A redacted copy of the deed of assignment is at page 55 to 69. It is redacted because it is a confidential and commercially sensitive document which confidentiality I must make clear I do not waive by referring to it herein.

20. I am told that when Mr Potter was cross-examined, his statement that the assignment took place between the Bank and Promontoria was not challenged.

21. Mr McWilliams states -- and I do not understand this to be in dispute -- that there was a considerable amount of evidence before the Recorder to the effect that the Bank itself regarded the deed of assignment as effective to transfer its rights under the facility agreement and under the legal charges. Mr McWilliams pointed out that Promontoria was registered at the Land Registry as a proprietor of the legal charges and thereafter appointed Law of Property Act receivers over the property subject to the legal charges. I note that there was no evidence that that appointment was challenged by the Bank, or that the Appellant received any demand from the Bank for payment of any sums due under the facility agreement at any point after the date on which the purported assignment took place. Finally, Mr McWilliams stated that in

cross-examination the Appellant himself had accepted that he was in no doubt as to the fact of the assignment from the Bank to Promontoria or as to the identity of the person to whom he, the debtor, was thereafter required to make repayment.

The appeal

22. In his skilful and succinct submissions, Mr Pugh, for the Appellant, has raised a number of points relating to the validity of the assignment. In view of the way in which the argument was developed, they fall essentially under four heads, of which Mr Pugh submitted that the first two were the principal ones.

The main arguments

23. The first was encompassed in paragraph 1(a) of the grounds of appeal. Mr Pugh took me to certain clauses of the deed of 28 October 2016. In relation to paragraph 2.1, he submitted that when one followed through the definitions in that clause, one could see that the assignment purports to identify debts relating to what was called "Borrower Assets Group". The main body of clause 2.1 states:

> "Subject to the terms of this deed and in consideration for the payment by the buyer [the buyer is Promontoria] to the seller [the seller is the Bank] of the purchase price for each relevant borrower asset group with effect on and from the effective time in relation to each specified loan asset comprised within that relevant borrower asset group:
>
> (a) each of the seller and Clydesdale assigns absolutely to the buyer the following in relation to each such specified loan asset comprised within that relevant borrower asset group…"

There are then described the characteristics of each specified loan asset which is being assigned absolutely, including, for example, "all its right title benefits and interest under in or to each relevant document". Other aspects of the assignment of each asset are also referred to.

24. Mr Pugh submits that because there is a reference in that clause to "each relevant borrower asset group", that implies that there is more than one such group, and that to establish that an appropriate debt or claim was subject to the assignment, one would need *prima facie* to identify the relevant borrower asset group relating to that debt or claim. In his submission, that is simply not possible. He contends that it is not sufficient simply to say that the assigned debt can be traced because clause 2.1 (a) (i) refers to a "relevant document"; the definition of "relevant document" is each facility loan or credit letter or agreement or security document etc relating to a particular "specified loan asset"; therefore, one needs to be in a position to identify what that "specified loan asset" is; such an asset is defined in the definitions section as "a relevant loan asset"; and the definition of "relevant loan asset" is "such asset… [etc] as is described in Schedule 1".

25. Turning to Schedule 1, Mr Pugh pointed out that much of its content is either redacted or largely unintelligible because it is so minutely printed. However, he accepted that in an un-redacted section, in which the print is so small as to be hardly legible, there is a reference to Mr Melton, the Appellant. In this section there are six itemised vertical items and six horizontal columns, all apparently referring to the Appellant, whose name is referred to in the third and the fifth columns. Mr Pugh submits it is important that there is nothing in that part of the Schedule which enables a reader to identify the loan or the assets or the debt claimed against Mr Melton or, indeed, to identify any properties. Although numbers are written in the columns, his submission was that they do not help the uninitiated reader, and that it is not sufficient for the purposes of the requirements of section 136 to write a document purporting to be a legal assignment in what is little more than a code; whether or not it was understandable to the parties to the agreement in question, it was not intelligible to other people.

26. Also referred to by Mr Pugh in this regard was clause 1.4 of the agreement, which states:

> "In the event of any inconsistency [between] the English property title number set out in Part 1 of Schedule 1 (relevant loan assets) and Part 2 of Schedule 1 (relevant loan assets), Part 2 of Schedule 1 (relevant loan assets) shall prevail."

He makes the point that there is no Part 2, certainly not in any copy that has been made available in the course of this litigation. Although Part 1 of the Schedule is clearly identified (albeit most of it is redacted, save for the pages relating to Mr Melton, to which I have referred) no page is present which purports to be Part 2; and the page immediately following Part 1 is called the "execution" page, on which appear the redacted signatures.

27. Mr Pugh's submission is that in these circumstances there is no effective legal assignment of these debts and securities, within the meaning and for the purposes of section 136; therefore, what was required of Promontoria by the Appellant's pleadings below was not complied with, viz. Promontoria was put to proof by the Appellant that the assignment had been validly made, as claimed.

28. Before discussing those points further, it is appropriate to refer to the second limb of Mr Pugh's argument, encapsulated in paragraph 1 (c) of the grounds of appeal. The two issues are to some extent related.

29. The target of paragraph 1 (c) of the grounds is essentially paragraph 34 of the judgment. The criticism of the Recorder relates to the contention that the argument he was dealing with at that stage of the hearing was that there was insufficient proof of a valid legal assignment to satisfy the law. Albeit the case had merely been pleaded as putting Promontoria to proof, Mr Pugh submitted that a positive case had been made that in law no such assignment was established, and that the Recorder had not correctly addressed that case.

30. It is perhaps worth recalling the terms of subsection 136(1), (neither party having referred to any other part of the section):

> "Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities) to pass and transfer from the date of such notice –
>
> (a) the legal right to such debt or thing in action;
>
> (b) all legal and other remedies for the same;
>
> (c) the power to give a good discharge for the same without the concurrence of the assignor.
>
> Provided that if the debtor, trustee or other person liable in respect of such debt or thing in action has notice –
>
> (a) that the assignment is disputed by the assignor or any person claiming under him or;
>
> (b) of any other opposing or conflicting claims to such debt or thing in action he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same or pay the debt or other thing in action into court under the provisions of the Trustee Act 1925."

It was Mr Pugh's submission that the proviso was not relevant, but Mr McWilliams disagreed.

31. Mr Pugh submitted, in relation to paragraph 34 of the judgment, that the Recorder had made a fundamental error. He had sought to cure what was, for the purposes of section 136, an omission or a defect in the deed of assignment, by looking at extraneous evidence to show that the purported assignment covered the Appellant's loan and securities. Whereas such a course of action might be permissible with, for example, a guarantee, for which a note or memorandum in writing might be sufficient, a legal assignment must comply strictly with section 136. For example, in the latter case evidence of the intention of the parties was irrelevant. In that regard he referred to the decision of the Court of Appeal in *Durham Bros v Robertson* [1898] 1 QB 765. He relied in particular upon a passage in the judgment of Chitty LJ at page 770, which indicated the purpose of the formalities in an equivalent predecessor section to the same effect:

> "Two matters, as is apparent on the face of it, had to be regarded: first, the simplifying of the remedy in favour of the assignee; and secondly, the protection of the original debtor."

32. Mr Pugh emphasised the second of those, i.e. the protection for a debtor. If complied with, the requirements of what is now section 136 enable the debtor to check, after he has been given notice of a purported assignment, whether that assignment has been

made properly in terms of the section. That, he submitted, was the purpose of the section.

33. In a later part of Chitty LJ's judgment, the learned Lord Justice said:

> "The question is not one of mere technicality or of form: it is one of substance relating to the protection of the original debtor and placing him in an assured position."

34. The Recorder, it is submitted by the Appellant, overlooked the need to put the debtor in such a position because he had admitted extraneous evidence of something which was not in writing and was not under the hand of the assignor. That defeated the object of the Act and was, therefore, inadmissible.

35. Mr Pugh also relied upon a passage in another judgment of the Court of Appeal in *Harrison v Burke* [1956] 1 WLR 419. Denning LJ (as he then was) was considering whether a notice of assignment was bad because it had given the wrong date of the assignment. He said:

> It is only necessary to read section 136 of the Law of Property Act 1925 to realise that the notice in writing of the assignment is an essential part of the transfer of title to the debt and, as such, the requirements of the Act must be strictly complied with and the notice itself, I think, must be strictly accurate, accurate in particular in regard to the date which is given for the assignment, and even though it is only one day out, as in this case, the notice of assignment is bad."

36. In a further case involving a decision of Lord Denning MR, *Van Lynn Developments v Pelias Construction* [1968] 3 WLR 1141, Lord Denning said at page 1145:

> "It seems to me to be unnecessary that [the notice of assignment] should give the date of the assignment so long as it makes it plain that there has, in fact, been an assignment so that the debtor knows to whom he has to pay the debt in future. After receiving the notice, the debtor will be entitled, of course, to require a sight of the assignment so as to be satisfied that it is valid and that the assignee can give him a good discharge, but the notice itself is good even though it gives no date."

37. Mr Pugh relies upon this in submitting that one aspect of the protection of section 136 is to entitle a debtor to have sight of the assignment after the notice has been given. Here, he submits, the Recorder went wrong in looking outside the terms of the agreement, at extraneous material, in order to be satisfied of an assignment of the relevant assets.

38. He also referred (in order to distinguish it) to the more recent case of *Promontoria (Chestnut) Ltd v Iliad Group Ltd* [2017] EWHC 2332 (QB), a decision of Her Honour Judge Moulder (as she then was), sitting as a Deputy Judge of the High Court. One of the issues, as here, was whether the claimant had proved that the rights which it was seeking to rely upon pursuant to a deed of assignment had been duly assigned to it.

Part of the deed of assignment had been redacted, in particular the definition of what was the effective time and the signatures. There was a submission that insufficient evidence existed to establish that there had been an effective assignment of (in that case) a guarantee. It was submitted that the redacted clauses could, for example, have contained reassignment provisions, and that the redactions in relation to the effective time could have meant that there were qualifications in the redacted wording which might affect when the assignment took place.

39. A witness statement from the claimant stated that the bank's interests, rights and remedies in respect of the relevant facility had been assigned pursuant to the deed of assignment to the claimant, and that the claimant became entitled to repayment of the outstanding balance of the loan and to make demands under the guarantee in question. There was the usual statement of truth.

40. The Deputy Judge said:

> "It seems to me that a witness statement from a partner of an established law firm signed with the statement of truth, which exhibits the deed of assignment and clearly states that pursuant to the deed of assignment the bank's rights in respect of the guarantee were assigned to the claimant, is sufficient evidence upon which the Court is entitled to rely. There is no evidence before the Court which calls into question the veracity of that witness statement."

Her conclusion was that the assignment was established.

41. Mr Pugh submits that that was materially different from the present case because the Judge was there dealing with what was effectively a fishing expedition; the defendant was simply speculating about what might have been redacted; the present case, he argued, was very different; here, in contradistinction, a defect in the written instrument was sought to be cured by looking at extraneous material outside the instrument itself. Mr Pugh's argument under this head was not so much that there was anything wrong with the substance of the points taken into account by the Recorder in paragraph 34, but that it was impermissible for him to look at anything other than what was to be found in the document itself; the provisions of a statute had to be complied with; therefore, no other rules of construction were applicable.

Conclusions on the main arguments

42. I will state my conclusions on these two arguments first, given that they are, as Mr Pugh submitted, the main points.

43. I note, as emphasised by Mr McWilliams in his helpful submissions, that the legislation is very specific about what is required in order for a valid absolute assignment to take place. It must be in writing, under the hand of the assignor, and there must be an express notice in writing given to the debtor. If the statute is complied with then, as it states, subject to equities (with which we do not need to concern ourselves on this appeal) the assignment will be effectual in law to pass and transfer the legal right and all other remedies in the assets in question from the date of such notice.

44. A point underlined by Mr McWilliams is that once the notice is given, provided the requirements of "in writing" and "under the hand of the assignor" are also complied with, the assignment becomes effective in law. At that point -- and I did not understand Mr Pugh to disagree -- the debtor is bound to treat the debt as transferred to the assignee, and is obliged to pay the assignee. In support of this, I was shown an extract from Chitty on Contracts (I assume it was from the current edition) at paragraph 19-019. In my view this proposition is wholly consistent with the statute and, as far as I have been made aware, there is no authority to the contrary.

45. The statute makes no reference to an entitlement to have sight of the assignment document itself. This is not, of course to negate the obvious fact that, if a dispute were to arise about the validity of an assignment, it would be inevitable that at some stage the assignment document would need to be produced.

46. As to the proviso to subsection 136(1), it is submitted by Mr McWilliams that the suggestion that the debtor must of necessity be able to scrutinise and understand the deed of assignment is wrong. This is because where, for example, there arises any problem or uncertainty or any suggestion that a person other than the purported assignee is going to enforce the debt, or where the assignor is disputing that he has made the assignment, the remedy is set out in the proviso to subsection 136(1) itself. In any such circumstances, the debtor is protected because he can either call upon the person making such a claim to interplead or he can pay any debt or other thing in action into court. Therefore, the suggestion that there is need for another remedy is simply wrong.

47. Turning to the specific challenges which I have endeavoured to summarise, the Appellant's first point is: how do you identify the borrower asset group referable to the relevant loan facility which is sought to be enforced?

48. I understand and have sympathy with the points made by Mr Pugh as to the infelicity (to put it politely) of the drafting of the deed of assignment in this case. However, in my view Mr McWilliams is correct in submitting that the purported problem relied upon by the Appellant is not a real one. There is no reason why it is necessary to identify which borrower asset group is relevant. Provided one can be satisfied that a relevant asset etc is "described" in Schedule 1, that being a reference to the wording in the definition of a "relevant loan asset", namely, a loan asset or debt claim "described in Schedule 1 to this deed", then the loan asset in question will be a "specified loan asset" for the purposes of clause 2.1. Those are the assets which are said to be assigned by that clause. As far as the "relevant borrower asset group" is concerned, that appears to be simply a group of specified loan assets, and in my view it is not of any particular interest to know to which group the particular asset with which we are concerned belongs.

49. The real question, it seems to me, is whether the reference to the Appellant in Part 1 of Schedule 1 is sufficient, in the context of this agreement, for the deed of assignment to be construed as assigning the facility letter and legal charges in question. It is in this respect that the two points raised by Mr Pugh are to some extent related.

50. In my view, the fact that one is concerned with satisfying the formalities of section 136 does not mean that one is not legitimately involved in a contractual construction

exercise. In order to see whether this deed does comply, as it must, with the requirements of section 136, and in order to see whether it assigns the facility letter and legal charges in question, one has to construe it. In construing a document, one is entitled to do so in the context of the surrounding circumstances or, as it is sometimes called, the factual matrix.

51. Amongst the surrounding circumstances here were the following: that the loan was admittedly from the Bank; that the Bank wrote to the Appellant before the assignment, telling the Appellant that the loan was going to be assigned and to whom it was going to be assigned; that the Appellant's name and details are recorded in a list of relevant loan assets in Schedule 1 under six different items; that since the time of the assignment no demand for repayment of any part of the loan has been made by the Bank to the Appellant.

52. I also consider (as apparently did HH Judge Moulder in *Iliad*) that a court would be entitled to take account of evidential material such as the effectively unchallenged evidence from Mr Potter to the effect that the relevant loan to the Appellant and related securities had been assigned by this deed, which was itself exhibited to his witness statement, as well as the fact that the Appellant himself is apparently in no doubt about the identity of his creditor since the time of the assignment, having accepted in his oral evidence to the Recorder that he knew the rights had been assigned by the Bank to Promontoria.

53. The question, therefore, is whether the construction exercise carried out by the Recorder was impermissible, in that he erred in looking at any such circumstances in determining whether the Respondent had established a valid assignment of the relevant assets.

54. In my judgment, the Recorder was entitled to construe the references to the Appellant in Schedule 1 as references to the facility letter and associated legal charges, and for that purpose to take into account factors such as those to which he referred in the relevant paragraphs of his judgment. Were that not permissible, he would have had to consider the document in a factual vacuum. That, in my view, would not be consistent with the modern, entirely sensible, approach to construction of contractual documents. In appropriate circumstances, a court is entitled to take into account the factual matrix. The Recorder here did not overstep the mark. Nor did he ignore the document itself, to which he referred in the criticised paragraphs.

55. All available factors and evidence pointed to the construction he reached, namely that the Appellant's loan facility and charges were the subject of the deed of assignment. There is not a single factor of any kind which would cast doubt on the correctness of his conclusion. There was no breach of the statute with respect to his approach to the issue in question.

56. Mr McWilliams also drew attention, as one of the surrounding circumstances, to the fact that Promontoria was only registered as legal proprietor of the legal charges relating to the Appellant’s properties because the Bank had executed the appropriate transfer documents. In that regard, he referred to section 58 of the Law of Property Act 1925 which provides:

> "If on the entry of a person in the Register as the proprietor of a legal estate, the legal estate would not otherwise be vested in him, it shall be deemed to be vested in him as a result of the registration."

57. That is not a necessary part of the Respondent's case, and Mr Pugh states that it was not relied upon by the Respondent in the court below. Nevertheless, it is a feature of the surrounding circumstances which reinforces the conclusion the Recorder reached.

58. Therefore, I consider the criticism of the Recorder's conclusion that the agreement covered the Appellant's loan and securities to be unjustified.

59. As to the decision of Her Honour Judge Moulder, despite Mr Pugh's valiant attempts to distinguish it, the issue in that case and the issue in the present case, are not materially very different. There the debtor was asserting that it could not be sure the agreement had been properly signed, and that therefore the requirements of the section had not been complied with. The debtor was also saying that there was doubt about when the assignment took place. Similarly, in the present case, Mr Pugh contends there is a doubt about whether the deed was assigning the Appellant's loan and associated legal charges to Promontoria.

60. Subject to the other points with which I need to deal, I consider that in the present case there has been achieved exactly what the statute requires: there is an assignment of the relevant assets in writing which purports to be under the hand of the assignor, albeit the signature itself is redacted. I will consider in a moment whether that is a factor which makes any difference. However, the arguments discussed above do not defeat the reliance placed by Promontoria on the deed of assignment as an effective assignment of the Appellant's loan and charges.

The subsidiary arguments

61. The subsidiary arguments in the appeal relate, first, to the redaction of the signatures in the deed of assignment and, second, to the question whether there was a valid notice of assignment.

62. The first point is reflected in paragraph 1(b) of the grounds of appeal. Mr Pugh recalls that in another case in which he appeared before me not long ago, I refused permission to appeal on a similar point.

63. On the "execution" page of the deed of assignment, the actual signatures of the representatives of the assignors (and of the witnesses) have been redacted, although their names have been written in block capitals in manuscript underneath the relevant redactions. The argument put by the Appellant is very similar to that which was put to Her Honour Judge Moulder in the *Iliad* case. Mr Pugh did not go so far as to suggest that there was no signature at all under the redaction, and he accepts that there is evidence of *someone* purporting to sign. However, he submitted that the debtor was entitled to see the signature, because otherwise he could not be sure that the document

was "under the hand of the assignor" for the purposes of section 136. He argued that where signatures are redacted in this way, suspicions are likely to arise; and in this case the suspicions are reinforced by the fact that the internal numbering of the pages is not correct. Therefore, he submits that for this further reason Promontoria has not established that it has a valid absolute assignment of the Appellant's liabilities, for the purposes of section 136.

64. The Recorder found as a fact that the document was signed by the person whose name is stated in block capitals underneath the redaction. He also accepted that there were good reasons for the redactions of the signatures. I have already referred to paragraph 15 of Mr Potter's witness statement which explains why those redactions were made. This was in evidence before the Recorder. As the decision in *Iliad* confirms, a fear of fraud is not uncommon in this area, and it was apparently not put to Mr Potter in cross-examination that the document had not in fact been signed by the person whose name appeared in block capitals beneath the redacted signature.

65. In my view, on the material before him the Recorder was entitled to make the finding of fact which he made as to the redacted signatures. I can see no basis on which an appeal court would be justified in calling into question that finding of fact. Therefore, I am unable to accept this argument for impugning the existence of a valid assignment for the purposes of section 136.

66. Finally, with reference to paragraph 1 (d) of the grounds of appeal, Mr Pugh argued that there was no valid notice of assignment. I have explained already that there was a notice dated 14 November 2016 which give an inaccurate date for the deed of assignment, namely 5 June 2016 rather than 28 October 2016. It is common ground that that was not a valid notice, in the light of the decision of the Court of Appeal to which I have referred. It is Mr Pugh's submission that if one serves an inaccurate and invalid notice, then one puts the debtor in an impossible position of confusion if that inaccurate notice is not expressly withdrawn. Therefore, he argues, the giving of that notice somehow invalidated the earlier accurate notice given on 1 November 2016.

67. I do not accept this argument. It is common ground that no reliance is or could be placed upon the invalid notice of 14 November 2016. It also appears to be common ground that, subject to the effect of the later invalid notice, the earlier accurate notice given on 1 November 2016 was valid. There is no dispute, and indeed the Recorder found as a fact, that the Appellant had received the notice of 1 November 2016. Therefore, assuming all other requirements were satisfied, once the valid notice of 1 November 2016 was received by the Appellant, the legal assignment was complete and effective in accordance with the terms of section 136. In my view, the fact that there was a subsequent inaccurate and invalid notice could have no effect on the legal transfer that was already effective as of the earlier date.

68. As Mr McWilliams pointed out, it would be quite extraordinary and arbitrary if, having obtained legal title, one could somehow lose it because of a subsequent letter containing an inaccurate date. It is wholly unsurprising that there is no authority for the proposition that an inaccurate and invalid subsequent notice must be specifically corrected in order to satisfy the requirements of section 136, in circumstances where they have already been satisfied.

69. In any event, as the Recorder stated in his judgment, any uncertainty that might have been caused by the inaccurate letter was thereafter resolved when the deed of assignment itself was sent to the Appellant on about 13 January 2017. The date was not redacted from the copy of the assignment so sent.

70. Therefore, there cannot be a successful appeal on the basis that an invalid notice or no valid notice was given for the purposes of section 136. That requirement was clearly satisfied.

Conclusion

71. For those reasons, the appeal must be dismissed.

This Judgment has been approved by the Judge.