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CR-2013-009165

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL

Date: 14/07/2021

Before :

ICC JUDGE BARBER

Between :

(1) REFINED LONDON LIMITED
(2) REFINED (UK) LTD
(3) PIPER LONDON LTD
(4) MARK WILSON AND ALEXANDER KINNIMONTH
(as joint liquidators of the above-named companies)

Applicants

- and –

(1) CHARLES GORDON
(2) SU-ELISE NASH
(3) CLAUDIA EMMANUEL
(4) LEON SMITH
(5) JASON BARRET
(6) NADIA STEPHENSON/SHEPHERD
(7) GBQ INVESTMENTS LTD
(8) LINDSAY QUIRKE

Respondents

Peter Shaw QC and Raj Arumugam (instructed by Gowling WLG (UK) LLP) for the **Applicants**
Gabriel Buttimore (instructed by Keidan Harrison LLP) for the **First Respondent**
Peter Jolley (instructed by Teacher Stern LLP) for the **Third Respondent**
Hearing date: 19 May 2021

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Approved Judgment

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10.00 a.m on 14 July 2021

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ICC Judge Barber

1. On 19 May 2021 I refused the Applicants permission to re-re-amend their Particulars of Claim in relation to the proposed rectification claim under paragraph 2(1) of Schedule 4 to the Land Registration Act 2002. I did so on the basis that written reasons would follow. This judgment sets out my reasons for refusing the amendment.

Background - Overview

2. It is the Applicants' case that R1, in conjunction with R2 to R8, perpetrated a series of frauds whilst he was a director of the 1st to 3rd Applicant companies in relation to the leases of 32 properties which are the subject of these proceedings. The Applicant companies were wound up on public interest grounds on 4 July 2014. Mr Wilson and Mr Kinnimonth, as joint liquidators of the 1st to 3rd Applicants ('the Liquidators'), allege that R1, as the director and controlling mind of the Applicant companies, improperly filed misleading accounts at Companies House, showing the Applicant companies as either dormant or as having minimal assets. HMRC has filed claims in the liquidation totalling in excess of £4.4m for periods between August 2005 and June 2014. More than £10 million in cash had passed through the Applicant companies bank accounts since 2005. R1 was subsequently disqualified from acting as a director for a period of seven years from 8 May 2018 in respect of his conduct as a director of the 1st and 2nd Applicant companies.

Background - detail

3. The 1st Applicant ('RLL') was incorporated on 22 March 2006. The 2nd Applicant ('RUK') was incorporated on 19 August 2013. The 3rd Applicant ('Piper') was incorporated on 22 November 2010. The Applicants maintain that, at all material times, R1 was either a registered director of these companies or a de facto/shadow director and their controlling mind. They further maintain that, at all material times, R1 was either the sole shareholder or the ultimate beneficial owner of the applicant companies. R1 was the sole signatory on the Applicant companies' bank accounts.

4. Following the making of winding up orders against RLL, RUK and Piper on public interest grounds, the Liquidators were appointed by the Secretary of State as joint liquidators of RLL on 18 September 2014 and of RUK and Piper on 5 February 2015.

5. These proceedings were issued on 9 March 2018. The Liquidators maintain that, at the behest of R1, RLL and RUK engaged in a series of fraudulent transactions ('the Transactions'), which may be summarised as follows:

   (1) RLL and RUK acquired freehold residential properties, funded with the aid of a secured loan facility granted by National Westminster Bank to RLL;

   (2) RLL and RUK refurbished these properties, divided them into 32 flats and granted new leasehold interests over the flats which were purportedly sold (with the aid of mortgage finance to the purchasers) to (a) R1 in his own name or operating under various aliases; (b) R2 (Su Elise-Nash), who was at the time R1's girlfriend; and (c) R3, R4, R5 and R6, who were associates of R1.

6. The Liquidators allege that

(1) significant elements of the stated purchase price were (a) left unpaid; (b) repaid to the purchaser after completion of the sale; and/or (c) paid to the purchaser ahead of completion; and that

(2) RUK and Piper discharged parts of the purported purchasers' own mortgage debts in respect of mortgages those purchasers supposedly obtained in order to acquire the flats.

7. The Liquidators allege that the effect of these arrangements was that R1 (and his associates) obtained the benefit of leases of the flats without having paid the full purchase price and also had the benefit of mortgage payments made by RLL, RUK and Piper. The Liquidators maintain that

(1) the total shortfall to the Applicant companies in purchase monies upon the grant of the leases stands in excess of £1.5m ('the Shortfall Properties'); and

(2) the total value of mortgage payments made by the Applicant companies, less rental income received, stands at £798,000 odd ('the Mortgaged Properties').

8. R8 (Lindsay Quirke) is the sole director and sole shareholder of R7 (GBQ Investments). The Liquidators say that R8 is a long-standing personal assistant of R1. They allege that R7 purported to enter into a contract with R2 on 19 October 2016 to purchase from R2 eight of the properties involved in the fraudulent scheme referred to above (the 'Nash Properties'). The Liquidators say that R7 was not a bona fide purchaser for value of the Nash Properties and that R8 is an associate of R1 and/or acting as his nominee and/or on his instruction.

9. The Respondents dispute all allegations of wrongdoing made against them in these proceedings.

10. The relief originally sought by the Applicants followed fairly conventional lines, such as (i) declarations/findings that that RLL and RUK have unpaid vendors' liens over the flat leases (ii) declarations/findings that RLL and RUK have equitable interests in the flat leases, coupled with orders for possession and sale (iii) declarations/findings that RLL, RUK and/or Piper have rights of subrogation in respect of mortgage sums discharged, together with attendant relief (iv) damages and accounts; and (v) claims by the Liquidators under various sections of the Insolvency Act 1986.

11. The claim was listed for trial, case-managed and costs-managed on that basis.

12. On 10 June 2020, however, some time after the claim had been listed for trial and final costs budgets had been set, the Liquidators amended their Particulars of Claim inter alia (1) to add an allegation that the Transactions (as collectively defined at paragraph 5 above) were void as a result of R1's want of authority and/or were a sham and void and (2) to add a claim for rectification of the Register of Title at HM Land Registry pursuant to para 2(1)(a) of Schedule 4 to the LRA 2002.

13. Permission for these amendments was granted by Order of Deputy ICC Judge Agnello dated 9 June 2020. The full impact of these amendments on third parties does not appear to have been appreciated or explored with the court on 9 June 2020; at the time that permission was granted, Mr Shaw QC for the Applicants submitted to Deputy

ICC Judge Agnello that the making of the amendments would not prejudice the trial date. Yet there were at least 8 mortgage lenders who held security over the leases of the Shortfall Properties. They were not parties to the proceedings at the time of the June 2020 amendments, but were clearly affected by the relief sought.

14. In October 2020, the Liquidators issued an application for directions that the trial of the claim be split into two stages, relying upon Aldi Stores v WSP Group plc [2007] EWHC 55 ('the Aldi Application'). They proposed that the 7 day trial, at that stage listed for January 2021, be used to determine 'all issues in the claim save for three specific issues' concerning relief, and that (if required) a further hearing be listed on a later occasion, to determine (1) whether the leases which were the subject of the proceedings were void/voidable; (2) whether the Applicant companies had unpaid vendors' liens over these leases; and (3) whether the court should make an order rectifying the register pursuant to LRA 2002 in respect of any of the leases as against (i) the existing Respondents to the proceedings and (ii) the various mortgagees.

15. The Liquidators' proposal met with resistance from several of the lenders, including in particular the Bank of Scotland, who sought to be joined immediately.

16. The matter came before Joanne Wicks QC (sitting as a Judge of the High Court) on 15 December 2020. The learned deputy heard from the Applicants and R1, R3, R4 and R5 to the substantive application. She also heard from Mortgage Express, NRAM, the Bank of Scotland, Santander and Mortgages 1. In addition, she had before her letters from the Nationwide Building Society and from Gateley Legal on behalf of the Co-Operative Bank.

17. As confirmed by Joanne Wicks QC at paragraph 12 of her judgment:

> 'It needs to be appreciated that the re-amendments [ie those introduced in June 2020] introduced a very substantial change in the nature of the applicants' case. The claim as originally pleaded did not challenge the validity of the leases which had been granted. Indeed, it could be said that the claim as originally pleaded assumed the validity of the leases which have been granted. The proprietary claims that were then being made were for liens on those interests or that those interests were held beneficially for the applicants. So, in terms of priority, the applicants' claims are protected by unilateral notices, which would give priority against any later registered dispositions but would not disturb any earlier registered interests or notices'.

18. Joanne Wicks QC continued:

> '13. By the re-amendment, a fundamental change to the applicants' case was introduced. Now there was a challenge to the whole validity of the leaseholds. And that would inevitably impact not only on the flat owners that on anyone who had a derivative interest, including the lenders and anyone else who had a registered interest.

14. It is, in my view, a necessary consequence of the claim as it was formulated that rectification as now pleaded would only be ordered if all of those whose interests were affected had had a fair opportunity to meet the case against them. However, the significance of this change to their case does not appear to have been fully appreciated by the applicants. ..

…

19. The applicants' submission is that the most efficient and practical case management to be carried out pursuant to [the Aldi] jurisdiction is firstly, to retain the existing trial date, which should be used for what is described as stage one. Stage one would be findings of fact, including on questions which go to the question of voidness, for example, lack of authority in the first respondent. Stage one would also deal with issues of law other than those which impact on the lenders. At stage one, it is proposed that the lenders would not be joined. If they were to participate in the trial, it would be on terms that they would bear their own costs.

20. Then it is submitted that there should be a directions hearing and that is the one referred to in the applications notice, at which it will be determined whether or not the lenders are bound by those factual findings. Assuming it to be necessary, there will then be a stage two, at which the lenders will be fully involved. At stage two it will be decided whether the leases of void or voidable, whether the applicants have unpaid vendors liens over any of them and whether rectification should be ordered.

21. In my judgment, the Aldi principles are not applicable here because the applicants are not seeking to preserve their position in respect of a future claim. Rather they have already introduced a claim into these proceedings, but it is one which is not properly constituted because not all of the relevant parties interested in that claim have been joined into the proceedings.

22. As Mr Lees said for Santander and Mortgages 1, the first question is, are the lenders to be bound by the factual findings made at stage one? The applicants say that that decision can be parked until after the stage one trial has taken place, but I cannot accept that that could possibly be just.

23. If the lenders are to be bound, they must be joined in the proceedings. And if they are to be joined and bound, they must have a full opportunity to participate. They must have the opportunity to call their own evidence and challenge that of others and to make appropriate legal submissions. They cannot be expected to rely upon the fact that there are other parties

> involved in the litigation, the existing respondents. They have their own interests to protect and they cannot be expected to rely on others for them. …
>
> 26. So, the choices are effectively, that the lenders are either to be bound by the findings of fact which are made, in which case they need to have full participation. Or the lenders are not to be bound, in which case, there is a potential duplication of proceedings. And in this context, the applicants have made very clear that they definitely wish to pursue the claims against the lenders if the facts are found in their favour. It would, in my judgment, clearly be a waste of the court's resources to have two separate sets of proceedings with a very substantial overlap, particularly given that these are factually as well as legally complex proceedings.'

19. Joanne Wicks QC went on to conclude that a fair and efficient trial was not possible by the January trial date and vacated the trial. On the issue of joinder, she continued:

> '30. What strikes me is that rather than automatically joining in everybody who is interested in the sense of either being a lender or having some interest on the register, it would be more sensible to have some form of notice procedure whereby the applicants gave notice of the rectification claim and of the potential consequences of it to everyone who might be interested. And there was an opportunity for them to come forward and say whether they wish to be joined or not.'

20. Having heard further submissions, Joanne Wicks QC went on to order that the trial listed for January 2021 be vacated and that the Bank of Scotland Plc be joined as Ninth Respondent to the proceedings. Paragraph 4 of the order continued:

> '4. By 4pm on 22 January 2021:
>
> a. The Applicants shall issue an application for permission to re-re-amend their particulars of claim, attaching thereto a copy of the proposed re-re-amended particulars of claim which draft shall particularise their claim for rectification by, amongst other things:
>
> i. identifying the properties concerned;
>
> ii. specifying the nature of the rectification sought in respect of each title;

> iii. identifying the entries on the title registers of each property which would be adversely affected by the order for rectification sought;
>
> iv. identifying those persons with the benefit of those entries whose interest would be adversely affected by the order for rectification sought.
>
> b. The Applicants shall issue an application to join the parties identified in the draft re-re-amended particulars of claim pursuant to paragraph 4(a)(iv) hereof (save for those who are already parties) to these proceedings; and
>
> c. The Applicants shall serve such applications upon (i) the First to Ninth respondents and (ii) upon those parties the Applicants propose to be joined together with a copy of this order and a letter informing them that if they do not respond to the joinder application or attend the CMC referred to in paragraph 5 below, the court may make findings which affect their interest.'

21. Paragraph 5 of the order went on to direct the listing of a further Case Management Conference in the case on the first available date after 22 February 2021, with a time estimate of 1 day plus half a day judicial pre-reading.

22. Following the hearing before Joanne Wicks QC, the Applicants appear to have had a change of heart. Having made it 'very clear' to the learned deputy judge that they 'definitely' wished to pursue the claims against the lenders if the facts were found in their favour (Wicks judgment, para 26), the Applicants then filed and served draft re-re-re-amended particulars of claim which said something different.

The proposed amendments

23. In relation to their claim for rectification of the register, the Applicants seek the joinder of the Chief Land Registrar as a respondent and Ambassador Homes as a further claimant.

24. In the body of the pleading, the principal amendments proposed in respect of the rectification claim following the Wicks Order are set out in paras 38C to 38E, 9A and 9C, and para 13 of the prayer for relief of the draft RRAPOC. They build on paras 38A and 38B of the RAPOC, introduced with the permission of Deputy ICC Judge Agnello in June 2020, which sought rectification of the register pursuant to para 2(1)(a) of Schedule 4 to the LRA 2002 on the grounds that the sales of the leasehold interests in the Shortfall Properties were variously void and/or a sham and void.

25. In the draft RRAPOC now proposed, paras 38A and 38B still seek rectification of the register pursuant to para 2(1)(a) of Schedule 4 to the LRA 2002 (or at least, an order that the Applicants are 'entitled to' such rectification) on the grounds that the sales of

the leasehold interests were each either ‘void’ or ‘a sham and void’. The two key differences (in respect of the rectification claim) are as follows:

(1) in the new para 38C (e) proposed as part of the draft RRAPOC, the Applicants state that they *do not* seek to remove the charges registered against the leasehold flats and instead seek rectification of the register under para 2 of Schedule 4 to the LRA 2002 ‘*subject to*’ the interests of such chargeholders; and

(2) in Table 1 to the draft RRAPOC, introduced immediately under para 38C, Column E identifies the parties whom the Applicants seek to be registered as leasehold proprietor of each Shortfall Property *in place of* the existing leasehold proprietors by means of ‘rectification’ of the Register. These are as follows:

(a) in respect of the properties listed in Rows 1 to 7 of Table 1, the party sought to be registered as leasehold proprietor is RLL, who was the freehold proprietor at the time of the grant of the leases in question; and

(b) in respect of the properties listed at Rows 8 to 20 of Table 1, the party sought to be registered as leasehold proprietor by way of rectification is Ambassador Homes Limited (in liquidation) (‘Ambassador’). Ambassador is the successor in title to the freehold of these properties.

Permission to Amend: Principles to be Applied

26. On an application for permission to amend, an applicant needs to show some prospects of success. The test to be applied is the same at that applied on an application for summary judgment. The question is whether the proposed new claim has a real prospect of success: SPR North Ltd v Swiss Post International (UK) Ltd [2019] EWHC 2004 (Ch). A claimant should not be granted permission to amend their claim in order to raise a claim which is not maintainable in established law; the possibility that the Supreme Court may develop or change the law is not sufficient. The duty of the court is to apply the law as it stands: Mandrake Holdings Ltd v Countrywide Assured Group plc [2005] EWHC 311 (Ch) and Aarons v Brocket Hall (Jersey) Ltd [2018] EWHC 222 (QB).

Schedule 4 to the LRA 2002

27. Paragraph 2(1) of Schedule 4 to the LRA 2002 provides as follows:

‘The court may make an order for alteration of the register for the purpose of:

(a) correcting a mistake,

(b) bringing the register up to date, or

(c) giving effect to any estate, right or interest excepted from the effect of registration.

Discussion and conclusions

28. On behalf of the Third Respondent, Mr Jolley was neutral on the issue of amendment but expressed concern at ‘what would appear to be an attempt by the As to get around

the effect of the Order dated 15.12.2020, when it was decided that the claim is not properly constituted'; adding that the Applicants ought to 'explain .. how the proposed amendment contained in paras 38C to 38E is legally possible…'

29. On behalf of the First Respondent, Mr Buttimore of Counsel actively opposed the proposed amendments, arguing that 'the rectification sought is a legal impossibility and has no reasonable prospects of success .'

30. Mr Buttimore submitted that

(1) the purpose of land registration is for there to be a register upon which the world can rely. To this end, registration vests the legal title in the registered proprietor, whether or not there has been a valid disposition;

(2) a registered title is guaranteed by the state in the sense that, where there is a mistake in the register and a person suffers loss in consequence, the Land Registry will compensate that person for their loss;

(3) there is a power to alter the register for the purposes of (amongst other things) correcting a mistake:

Megarry & Wade, Law of Real Property 9th ed 6-001, 6-115, 6-131 et seq.

31. Mr Buttimore accepted that a void disposition may constitute a relevant 'mistake' for the purposes of para 2(1)(a) of Schedule 4 to the LRA 2002. The difficulty in this case, he maintained, was that, at the time of seeking permission to amend to add a claim for rectification under para 2(1)(a) of Schedule 4 LRA 2002, (at the hearing before Deputy ICC Judge Agnello on 9 June 2020), the draft pleading did not specify the nature of the rectification sought. The First Respondent was not legally represented at that hearing.

32. It was at the hearing before Joanne Wicks QC on 15 December 2020 that the effect of the proposed rectification claim was more fully explored. At that hearing, submissions were made on behalf of the respondents to the 'Aldi application', to the effect that the logic of the rectification claim was that rectification would result in the *cancellation* of the leasehold entries in the register, with the effect that *derivative interests would fall*. It was further submitted that, as matters then stood, the proceedings were not properly constituted because not all affected parties were before the court; in particular, various charge holders registered against leasehold titles, whose charges would evaporate upon cancellation of the leasehold entries.

33. It was in that context that Joanne Wicks QC made reference to 'a fundamental change to the applicant's case' at paragraph 13 of her judgment, stating that the rectification claim 'would inevitably impact not only on the flat owners but on anybody who had a derivative interest, including the lenders and anyone else who had a registered interest'. She further concluded (at para 21) that the claim introduced was 'one which is not properly constituted because not all of the relevant parties interest in that claim have been joined into the proceedings'.

34. Mr Buttimore argued that the draft RRAPOC now before the Court was a tortured attempt to avoid the consequences of Joanne Wick QC's decision and the necessity to

join or notify relevant parties, with all of the costs consequences that would follow. He argued that it was against that backdrop that the Applicants now sought to amend - so that rather than seeking the *removal or cancellation* of the leasehold titles (which was the relief implicitly claimed under the RAPOC, even if not originally particularised), those leasehold titles were to remain in place - and instead the *current* registered leasehold proprietors were to be *replaced* with either the relevant freeholder at the time of the creation of each of the leasehold interests or the current freehold reversioner. This he described as a 'legal nonsense', for a number of reasons:

(1) First, he argued, if the leases were void, then they would have no effect at law at all. They would disappear from the register, as would the security interests registered against them. This is why, he argued, the implicit relief sought in the claim as pleaded was the cancellation of the leasehold entries; the reasoning being that, if the leases were not valid, they should not have been registered and no leasehold title should have been created at the Land Registry.

(2) Second, he argued, by simply changing the name of the registered proprietor of the leasehold interest in each case, the underlying alleged 'mistake' is not 'corrected', since the allegedly void lease in each case *remains registered*. The power invoked under para 2(1)(a) of Schedule 4 to the LRA 2002 is 'for the purpose of …. *correcting a mistake*', not causing the register to reflect *another* mistake. The whole point of land registration, he submitted, is for the register to be an accurate representation of transactions in respect of, and rights in and over, land.

(3) Third, he argued, the underlying misconception in what is proposed is that the court proceed upon a *fiction*, namely, that the effect of the transactions in each case was that the freeholder granted the relevant leasehold interest to itself, but by mistake another person was registered as leasehold proprietor.

(4) Fourth, that too was a legal impossibility. As confirmed in the Land Registry Practice Guide PC 25 at 4.4: 'The House of Lords decided that neither one person, not a company, can create a lease in favour of the same person or company. Any attempt to do so is without legal effect (Rye v Rye [1962] AC 496). Therefore, we cannot give any kind of registered title to such lease.'

35. The Applicants insisted that 'there is no limitation as to the identity of the party in whose favour rectification may be made under para 2 of Schedule 4 to the LRA 2002 (skeleton argument, para 26c). They further referred me to Ruoff & Roper: Registered Conveyancing Note at para 46.004, which confirms inter alia that: 'Provided that [the applicant] can demonstrate that the proposed alteration is for one of the purposes specified in Sch 4 to the 2002 Act, anyone can … apply for alteration of the register.'

36. It is essential to note the proviso in the passage from Ruoff & Roper quoted above, however. The alteration has to be for a prescribed purpose. The prescribed purpose under para 2(1)(a) is the correction of a mistake.

37. On behalf of the First Respondent, Mr Buttimore accepted that it is not a requirement of para 2(1)(a) that the register be returned to the state it was in prior to the mistake.

He maintained however that there is no power under para 2(1)(a) Schedule 4 to do anything other than alter the register so as to make it accurate; that is to say so as *to correct the mistake*. What the Applicants seek to do, he argued, was something else entirely.

38. Mr Buttimore submitted that there is no discernible legal basis upon which the Applicants could obtain the relief they seek by way of their proposed amendments and that permission should be refused. He further submitted that the logical consequence was that the application to join Ambassador Homes and the Land Registrar should also be refused.

39. Mr Buttimore went on to submit that, as the court has already determined (on 15 December 2020) that the claim as currently pleaded is not properly constituted, it would be appropriate to strike out the rectification claim as currently pleaded in its entirety.

40. By supplemental skeleton argument, prepared with sight of Mr Buttimore's skeleton argument, Mr Shaw QC and his junior Mr Arumugam sought to meet the points raised by Mr Buttimore.

41. They accepted as 'technically correct' the objection that the same person cannot be freeholder and leaseholder but submitted that this was easily cured, by introducing, in place of the proposed replacement leaseholders named in Table 1, 'a nominee of RLL' or 'a nominee of Ambassador Homes' as appropriate. In this regard reliance was placed upon Ingram v Inland Revenue Commissioners [1997] 2 ALL ER 395 at 420 per Millett LJ.

42. In relation to Mr Buttimore's contention that if the leases were void in law, they would simply disappear from the register, Counsel for the Applicants sought to introduce a distinction between transactions void 'in law' and those void 'in equity', citing Bowstead on Agency (8th ed) at para 8-221 and an article by Professor R C Nolan in the Cambridge Law Journal, 68(2), July 2009 pp293-323. They argued that:

> 'The effect of this analysis for present purposes is that, contrary to the 1st Respondent's submissions, there is a properly arguable case that: (i) the grant of the leases of the Shortfall Properties are void in equity (not in law); (ii) the legal consequences of the grant remain (ie the leases subsist as a matter of law); (iii) the Applicant companies have both equitable remedies in respect of those leases and are entitled to rectification on the grounds that the grants of the leases were a 'mistake' within Sch 4, LRA 2002'

43. I pause here to note that the articles cited were not addressing the scope of rectification available under para 2(1)(a) of Schedule 4 to the LRA 2002.

44. Mr Shaw argued that the LRA 2002 does not prescribed any specified means for correcting a mistake He submitted that, where the director of a freeholder company has, in excess of authority, caused a lease to be granted, the correction of the mistake

does not require extinguishment of the leasehold title. He argued that the property transferred in excess of authority is held on trust for the company. It followed, he argued, that in the present case, the effect of the 'void ' grants of the leases of the Shortfall Properties was that they were 'held on trust for the applicant companies'. The 'correction of the mistake', he argued, would involve the applicant companies (or such nominees as they may direct) being registered as proprietors. In this regard reference was made to Knightsbridge Development Property Corp v South Chelsea Properties Ltd [2017] EWHC 2730 (Ch) at [61].

45. In my judgment these arguments are misconceived. Leaving aside the fact that the draft RRAPOC proposed do not expressly refer to the transactions in question as being void '*in equity'* rather than at law, in my judgment, the Applicants cannot get over the fact that a transaction which is simply void in equity rather than at law *needs no rectification of the Register* and does not qualify for rectification of the register under para 2(1)(a) of Schedule 4 to LRA 2002 on grounds of 'mistake'.

46. The case of Knightsbridge did not concern transactions said to be void simply in equity rather than at law. Registered proprietorship under the LRA 2002 (as with its 1925 predecessor) reflects the position at law, not in equity. As made clear in submissions before me (and contrary to the position which they adopted before Joanne Wicks QC), the Applicants are not challenging the position at law, simply in equity.

47. If the transactions have effect in law, there is no mistake to correct. I accept Mr Buttimore's submission that Schedule 4 para 2(1)(a) is not there for the purpose of giving effect to equitable relief, it is there for the purpose of correcting a mistake on the title.

48. In my judgment, the Applicants' rectification claim, as formulated in the draft RRAPOC, has no reasonable prospects of success.

49. I would add that the use to which the Applicants seek to put para 2(1)(a) of Schedule 4 to the 2002 Act is in any event entirely unnecessary, given the other powers at the court's disposal. In this regard I must consider the overriding objective, including ensuring that each case has allocated to it an appropriate share of the court's resources, whilst ensuring that other cases have their appropriate share as well. When I asked Mr Shaw why he had spent the best part of a day fighting to preserve this head of relief - after the 'second thoughts' which clearly followed the December 2020 hearing - and what it would add to, (say), a declaration as to beneficial entitlement and an order for possession/sale/transfer/vesting, following by registration at HM Land Registry of the sale/transfer/vesting in the usual way, he could not offer any reason. He conceded that, 'at the end of the day', a vesting order would achieve the same result.

50. For all these reasons, I shall decline permission to amend in respect of the rectification claim.

51. On behalf of the First Respondent, Mr Buttimore urged me to go further; to strike out the remainder of the rectification claim, on the basis that Joanne Wicks QC had already ruled that as currently pleaded it was not properly constituted and the

Applicants' attempt at a 'workaround' had failed. In the absence of a formal strike out application on proper notice to the Applicants, I shall decline to strike out the whole rectification claim at this stage. Instead, I shall give the Applicants an opportunity to revisit their pleadings in the light of my ruling. Any reformulated draft amendments for which permission to amend may subsequently be sought will be addressed at the next CMC. If the First Respondent (or any other Respondents) wish to seek an order striking out the rectification claim in its entirety, they should do so by way of fee paid application notice on proper notice to the other parties, and arrange for the strike out application to be listed at the next CMC.

52. I shall hear submissions from Counsel at the handing down of this judgment on any other consequential matters.

ICC Judge Barber