



Neutral Citation Number: [2025] EWHC 19 (Ch)

Case No: FS-2023-000011

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

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

Date: 13/1/2025

Before:

MASTER CLARK

Between:

ULTIMATE BRIDGING FINANCE LIMITED

Claimant

- and -

(1) 4 FAIRWEATHER CLOSE LIMITED

(2) 5 FAIRWEATHER CLOSE LIMITED

(3) 6 FAIRWEATHER CLOSE LIMITED

(4) 7 FAIRWEATHER CLOSE LIMITED

(5) 8 FAIRWEATHER CLOSE LIMITED

(6) MR AZHER MOHAMMED SHAREEF

Defendants

- and -

CRIMSON PHOENIX SOLICITORS LIMITED

Third Party

- and -

THE WILKES PARTNERSHIP LLP

Fourth
Party

Paul Fisher (instructed by **Spencer West LLP**) for the **Defendants**
Charles Phipps (instructed by **Mills & Reeve LLP**) for the **Third Party**
William Flenley KC (instructed by **Browne Jacobson LLP**) for the **Fourth Party**

Hearing date: 2 October 2024, followed by written submissions on 24 October 2024

Approved Judgment

This judgment was handed down remotely at 10.00 am on 13 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Master Clark:

Application

1. This is the defendants’ application dated 29 May 2024 for summary judgment against the defendants to their Part 20 claim: the third party, Crimson Phoenix Solicitors Limited (“CPS”) and the fourth party, Wilkes Partnership LLP (“Wilkes”), both of which conduct business as solicitors.

Parties

2. The first to fifth defendants are companies incorporated for the purpose of each buying one of 5 properties in Welling, Kent: 4 to 8 Fairweather Close (“the properties”). The sixth defendant, Mr Azher Shareef, is a director and sole shareholder of the first to fifth defendants. Although he is an applicant on the face of the application notice, he is not a claimant in the Part 20 claim; and the defendants’ counsel confirmed that he is not an applicant in this application. For the purposes of this judgment, I refer to the first to fifth defendants as “the defendants”.
3. CPS acted for the sellers (or purported sellers) of the properties. Wilkes acted for the defendants as buyers. The purchase price was £1,991,100 (“the completion sum”).
4. The claimant, Ultimate Bridging Finance Limited (“the lender”), loaned to the defendants a total of about £2 million, of which £1,791,069.02 was used to pay the completion sum. Mr Shareef provided the balance of £200,030.98 by way of director’s loans.

Factual background and the Part 20 claims

5. There was limited documentation before the court as to the conveyancing aspects of the transaction. CPS’s counsel suggested that this was because his client had been subject to an SRA intervention. However, the correspondence indicates that CPS’s conveyancing file was recovered from the SRA in June 2023, so that is not a satisfactory explanation.

6. Initially, the solicitors acting for the sellers were Crimson Phoenix Solicitors, a distinct entity from CPS. On 23 November 2022, a Ms Ranjo Kulasegaram emailed Osman Gul (of Wilkes):

“Thank you for your email below. I am no longer acting for Dr Indu Mitra in connection with the above matter under Crimson Phoenix Solicitors. Kindly forward all future correspondence to Nicole Smith. Please see attached herewith the letter dated 22 November 2022 from Crimson Phoenix Solicitors LTD for your information.”

Dr Indu Mitra was the director of the corporate owners of the properties.

7. The letter referred to in Ms Kulasegaram’s email was not in evidence. However, an hour later, an email was sent to Mr Gul by Nicole Smith, described in the email footer as a caseworker, stating:

“Ms Kulasegaram is no longer a part of this firm, hence the reason the matter has been passed over to me.”

8. On 1 December 2022, Ms Smith sent to Mr Gul documents including completed versions of the Law Society’s Form TA13 “Completion Information and Undertakings” (“Form TA13”) in respect of each of the properties. These were headed:

“WARNING: Replies to Requisitions 3.2 and 5.2 are treated as a solicitor's undertaking.”

9. Section 3.2 provided:

“WARNING: A reply to requisition 3.2 is treated as an undertaking. Great care must be taken when answering this requisition.

3.2 If we wish to complete through the post, please confirm that:

- (a) You undertake to adopt the Law Society's Code for Completion by Post; and Confirmed
- (b) The mortgages and charges listed in reply to 5.1 are those specified for the purpose of paragraph 6 of the Code Confirmed”

10. Section 5.2 provided:

“WARNING: A reply to requisition 5.2 is treated as an undertaking. Great care must be taken when answering this requisition.

No 5.2 Do you undertake to redeem or discharge the mortgages and charges listed in reply to 5.1 on completion and to send to us Form DS1, DS3, the receipted charge(s) or confirmation that notice of release or discharge in electronic form has been given to the Land Registry as soon as you receive them? Yes

11. Each form was signed (though the signature is illegible), and under the signature was printed: "Seller's solicitor Crimson Phoenix Solicitors Limited".

12. The Law Society's Code for Completion by Post ("the Code") provided, so far as relevant:

"2. In this code:

- (i) all references to the "Seller" are references to the person or persons who will be at the point of completion entitled to convey the legal and/or equitable title to the property and
- (ii) all references to the "Seller's Solicitor" are to the solicitor purporting to act for the party named as the seller in respect of the contract or purported contract that the buyer has entered into in order to acquire the property.

4. In complying with the terms of this code:

...

- (ii) Where the Seller's Solicitor receives and/or holds the money received for completion, the Seller's Solicitor receives and/holds that money on trust for the person or persons who provided it, to be either
 - (a) paid away only in respect of a completion in which the Seller executes and delivers a valid conveyance or transfer; or
 - (b) repaid to the person who remitted it, if completion does not take place.

8. The Seller's Solicitor undertakes:

- i. to have the Seller's authority to receive the purchase money on completion; and
- ii. on completion, to have the authority of the proprietor of each mortgage, charge or other financial incumbrance which was specified under paragraph 7 but has not then been redeemed or discharged, to receive the sum intended to repay it;"

13. As the Notes to the Code explain:

"5. Paragraph 4 (ii) of this code makes explicit the effect of the decisions in *Twinsectra Limited v. Yardley* [2002] UKHL 12, *Lloyds TSB Bank plc v. Markandan & Uddin (a firm)* [2012] EWCA Civ 65 and *P&P Property Limited v. Owen White & Catlin LLP and Dreamvar (UK) Limited v. Mishcon de Reya (a firm)* [2018] EWCA Civ 1082, that the Seller's Solicitor holds any purchase money received on trust for the person or

persons who provided it and is under a fiduciary duty not to deal with that money other than in accordance with the terms of this code.

6. In view of the decision in *P&P Property Limited v. Owen White & Catlin LLP and Dreamvar (UK) Limited v. Mishcon de Reya (a firm)* [2018] EWCA Civ 1082, paragraph 8(i) of this code constitutes an undertaking that the Seller's Solicitor has authority from the true owner of the title to the property named in the contract to receive the purchase money, and that such person is at the point of completion entitled to convey such title as the contract states will be conferred. This case law is also reflected in the definition of "Seller" used throughout this code."
14. On 1 December 2022, Mr Gul emailed Ms Smith asking for revised copies of the TA13 forms, in which the full dates of the charges referred to in the forms were stated. He repeated this request on 2 December 2022, and Ms Smith sent amended forms that day. The forms remained, however, dated 29 November 2022, and the signatures on them appear to be the same as in the original forms sent. On 2 December 2022, Mr Gul emailed Ms Smith about 3 further errors in the forms: the date stated for the charge over 7 Fairweather Close, and the name of the chargee for the charges over 4 and 8 Fairweather Close. Corrected forms (again still dated 29 November 2022 and still containing what appear to be the same signatures) were sent to him that day.
15. Attached to the Part 20 particulars of claim are copies of letters dated 2 and 5 December 2022 from, respectively, CPS and Wilkes, addressed to both TLT (the lender's solicitors) and the lender itself. Both letters are signed, and set out that the letter has been signed by a solicitor who has authority to give undertakings on behalf of the firm.
16. Contracts were exchanged on 6 December 2022. On dates which are unclear, the completion sum was transferred to Wilkes' client account, and then transferred by Wilkes to CPS. However, CPS did not provide (and has not ever provided) to Wilkes the documents necessary to enable the defendants to be registered as proprietors of the properties at the Land Registry (Stock Transfer Forms and TR1s), and to remove the existing charges on the title (DS1s). CPS admits it has paid away the completion sum (although its Defence does not say to whom).
17. On 5 April 2023, the Solicitors Regulation Authority intervened into CPS.
18. On 5 December 2023, the lender commenced its claim in debt against the defendants. The defendants' Part 20 claim was issued on 19 March 2024. CPS and Wilkes have also made Part 20 claims for contribution against each other.

19. On 28 June 2024, I granted summary judgment to the lender against the defendants in the sum of £2,465,518.53.

Claim against CPS

20. The primary claim against CPS is for breach of trust by releasing the completion monies to persons unknown. The defendants do not rely upon the court's supervisory jurisdiction to enforce a solicitors' undertaking. They accept that CPS, as a limited company, was not and is not an officer of the Court, and, accordingly, not subject to the court's inherent jurisdiction to enforce a solicitor's undertaking: *Harcus Sinclair v Your Lawyers Ltd* [2021] UKSC 32, [2022] AC 1271.
21. The trust is alleged to arise from the undertakings provided by CPS in the Form TA13, including an undertaking to adopt (and therefore comply with) the Code.
22. The particulars of claim also allege that the defendants are entitled to a contribution and/or indemnity pursuant to section 1 of Civil Liability (Contribution) Act 1978 ("the Contribution Act") for any sums deemed owing to the lender by the defendants in the main claim; and the prayer seeks such a contribution and/or indemnity.
23. The defendants' pleading of its contribution claim is sparse:
 - "35. [CPS] provided an undertaking to [the lender]'s solicitors, TLT dated 2 December confirming among other things, that they were holding original DS1s"
 - "42. [CPS] is also in breach of its undertakings to TLT and [the lender]"
24. There is no particularisation of the breaches, no allegation that the lender has suffered loss or damage nor what that loss or damage is alleged to have been.
25. CPS's Defence admits that:
 - (1) it acted in the transaction from about 23 November 2023;
 - (2) the completion monies were transferred to its client account; and
 - (3) it paid away the completion monies, although, as noted, it does not say to whom.In its counsel's oral submissions, CPS accepted (rightly, in my judgment) that Form TA13 (if signed with authority) and the Code would give rise to a trust obligation in respect of the completion monies.
26. CPS's primary defence is that the Forms TA13 were not completed or signed on its behalf. It pleads that the signatures on the forms are illegible, and that it does not know the identity of the person who signed them.

27. CPS denies the claim under the Contribution Act. At para 33 of its Defence it pleads that the apparent signatory of the letter dated 2 December 2022 to TLT, Ms Techmina Malik, did not sign or authorise the signing of the letter; and that her signature was forged.
28. In addition, it pleads, at para 45, that:
 - (1) the defendants have not adequately explained the basis on which it is alleged that CPS is liable to the lender;
 - (2) the lender's claim against the defendants is a debt claim and is not in respect of "the same damage" as any claim which the lender might make against CPS.
29. No Reply has been filed to CPS's Defence.

Claim against Wilkes

30. The primary claim against Wilkes is for breach of trust in parting with the completion sum in circumstances where completion did not take place.
31. In its Defence, Wilkes admits that it parted with the completion sum, but does not admit that there was a fraud. It accepts, however, that if there was a fraud, it acted in breach of trust by paying the completion sum to CPS.
32. Wilkes' primary defence to the breach of trust claim is that it is entitled to be relieved from any breach of trust under the court's powers under section 61 of the Trustee Act 1925. Wilkes alleges that:
 - (1) it acted honestly;
 - (2) it acted reasonably- in particular, that it was not its responsibility to verify the identity of CPS's clients, nor to check that CPS had verified the identity of its clients;
 - (3) it ought fairly to be excused for breach of trust, because it acted in accordance with reasonable conveyancing practice.
33. Again, there is no Reply to Wilkes' Defence. The defendants do not therefore advance any positive case as to why Wilkes did not act reasonably, or as to the steps that should have been taken by Wilkes for it to have acted reasonably.
34. In addition, Wilkes have filed evidence in support of their defence under section 61. The court is entitled to take this into account in assessing whether it has a real prospect of success in its defence: *Bhamani v Sattar* [2021] EWCA Civ 243. This evidence¹ sets

¹ the witness statement dated 17 July 2023 of Simon Thomas

out that if its insurers made a payment on this claim, then Wilkes' excess would be £700,000 representing 90% of its current cash reserves.

35. Following the hearing of this application, Wilkes has filed evidence in an application (seeking information from CPS) showing that:
- (1) CPS's insurers (IGI) have declined cover in respect of the claim made against it by the defendants and the contribution claim made against it by Wilkes;
 - (2) This decision was reached on the basis that all of the directors of CPS committed or condoned dishonesty or fraud that caused the claim now made by the Defendants and Wilkes;
 - (3) Two of CPS's directors are challenging this decision;
 - (4) If CPS became insolvent, Wilkes would have the right (pursuant to the Third Parties (Rights Against Insurers) Act 2010) to challenge the declining of cover;
 - (5) Wilkes believes that IGI intends to conduct a "swift" arbitration in order to resolve the matter before Wilkes has acquired the above right.
36. The substance of this evidence is that there is at the very least a risk that if Wilkes succeeds in its Part 20 claim against CPS, that success will be worthless.
37. As to the defendants' claim against Wilkes under the Contribution Act, this is also sparsely pleaded:
- "35. ... Wilkes provided an undertaking to TLT dated 6 December 2022, confirming among other things, that it would transfer within 2 working days of completion completed and dated transfer of [the properties] from the sellers to the defendants and security documents."
40. ... Wilkes is also in breach of its undertakings to TLT."
38. Again, there is no particularisation of the breaches, no allegation that the lender has suffered loss or damage, nor what that loss or damage is alleged to have been.
39. In Wilkes' Defence:
- (1) it does not admit that it is liable to the lender;
 - (2) if it is liable, then it denies that it is liable for the "same damage" as the damage for which the defendants are liable to the lender.

Legal principles

Summary judgment

40. CPR 24.2 provides, so far as relevant:

“The court may give summary judgment against a ... defendant on the whole of a claim or on a particular issue if –

- (a) it considers that the party has no real prospect of succeeding on the ... defence or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

41. The principles to be applied on applications for summary judgment are well established. They were summarised by Lewison J, as he then was, in *Easyair Ltd v Opal Telecom Limited* [2009] EWHC 339 (Ch), and approved in several appellate authorities. It is unnecessary to set them out here. The burden of proof is on the applicant to show that the conditions in CPR 24.2 are satisfied.

Conveyancing solicitors’ trust obligations

42. Where, as here, a conveyancing transaction takes place in accordance with the Code, then the parties’ solicitors’ fiduciary obligations are set out in *P&P Property Limited v Owen White & Catlin LLP and Dreamvar (UK) Limited v. Mishcon de Reya (a firm)* [2018] EWCA Civ 1082, [2019] Ch 273 (“*Dreamvar*”):

“85. The ultimate question to be decided is whether at the point when the purchase money is released by the vendor’s solicitors to his client the solicitor has the authority of the purchaser to make that payment even if the transaction is not a genuine sale. If the vendor’s solicitor does not have the purchaser’s authority to make that payment then, subject to any question of relief under section 61, he acts in breach of trust. The purchase money belongs to the purchaser and is held on a bare trust for his benefit and subject to his instructions. Part of the argument on this issue has ventured into questions of whether the money was held by the vendor’s solicitors on some kind of *Quistclose* trust (see *Quistclose Investments Ltd v Rolls Razor Ltd* [1970] AC 567) but that can only arise as an issue if the money in the hands of the vendor’s solicitor would not otherwise be the subject of a trust in favour of the purchaser.

86. The agreed starting point must be that in the hands of its own solicitor the purchase moneys were held on a bare trust for the purchaser pending completion: see *Target Holdings Ltd v Redfurns* [1996] AC 421, 436. The entitlement of the solicitor to part with the money is governed by the instructions he receives from his client. It is not suggested that those instructions permitted the purchaser’s own solicitors to release the moneys except on completion of a genuine sale and purchase of the property ...”

Liability in respect of the same damage

43. Sections 1(1) and 6(1) of the Contribution Act provide, so far as relevant:

“1.— Entitlement to contribution.

- (1) ... any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).”

...

“6.— Interpretation

- (1) A person is liable in respect of any damage for the purposes of this Act if the person who suffered it (or anyone representing his estate or dependants) is entitled to recover compensation from him in respect of that damage (whatever the legal basis of his liability, whether tort, breach of contract, breach of trust or otherwise).”

44. In *URS Corporation Limited v BDW Trading Limited* [2023] EWCA Civ 772, [2024] KB 827, the Court of Appeal held that the right to make a claim for contribution is established when the three ingredients set out in s.1(1) of the Contribution Act can be properly asserted and pleaded, namely:

- (1) is Party B liable, or could they be found liable, to Party A?
- (2) is Party C liable, or could they be found liable, to Party A?
- (3) are the respective liabilities of Party B and Party C in respect of the same damage suffered by Party A?

45. The meaning of “same damage” was considered by the Court of Appeal in *Howkins & Harrison v Tyler* [2001] PNLR 27. In that case, valuers had accepted their liability to a lender in respect of their negligent valuation of a property which was the security for the loan. The borrower had defaulted on the loan, and the lender had sold the property for less than its loan, thereby sustaining a loss. The valuers sought a contribution from the borrower under the Contribution Act, on the basis that the borrower was partially responsible for this loss.

46. The Vice Chancellor (with whom the other Judges agreed) began by considering the damage for which the valuers and the borrower were liable to the lender. The valuers were liable for the damage to the lender in lending money which, had it not been for the valuers’ negligence, it would not have lent. The borrower was liable for their failure to pay the lender the sum due under their contract with it. He continued:

- “14. Is that the same damage as that for which the [valuers] were liable? In my view it is plainly not the same damage. The “damage” for which the respondents are liable is that the [lender] has not been paid the sum of money contractually due. The damage for which the [valuers] were liable was the damage to the [lender] in lending money that the [lender] would not otherwise have lent. The respective formulations of the “damage”, it seems to me, carry the case outside the scope of section 1(1) of the 1978 Act.”

47. He then formulated the following test where there are two parties who are each said to be liable to another party in respect of the “same damage” suffered by it (I follow the naming of the parties used above (and not that used in the judgment), for the sake of clarity). The two questions to be asked are:

- (1) If B pays A a sum of money in satisfaction, or on account, of B's liability to A, will that sum operate to reduce or extinguish, depending upon the amount, C's liability to A?
- (2) If C pays A a sum of money in satisfaction or on account of C's liability to A, would that operate to reduce or extinguish B's liability to A?

Unless the answer to both of those questions is yes, the case is not one to which the 1978 Act applies.

48. The Vice Chancellor explained the policy of the Act at [18]:

“The Act was intended to deal with cases where the damage suffered by the victim could be remedied by a claim against one or other of two or more possible defendants, and where the quantification of the damage to the victim for which a defendant would be liable would be affected by what the victim might recover or had recovered from one or other of the possible defendants. If that condition is not present, it seems to me that the Act was not intended to apply and cannot be applied.”

Section 61 Trustee Act 1925

49. Section 61 of the Trustee Act 1925 provides:

“Power to relieve trustee from personal liability.

If it appears to the court that a trustee, whether appointed by the court or otherwise, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the commencement of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve him either wholly or partly from personal liability for the same.”

50. There are therefore 3 elements to the defence provided by the section:

- (1) honesty;
- (2) reasonableness;
- (3) whether the court should exercise its discretion.

51. As to reasonableness, the requisite standard is reasonableness, not perfection: *Nationwide Building Society v Davisons Solicitors* [2012] EWCA Civ 1626; [2013] PNLR 12 at [48].

52. As to whether the court should exercise its discretion to excuse from liability, this involves balancing the impact on the defaulting trustee with the impact on the beneficiaries. Briggs LJ (as he was) explained this in *Santander UK v RA Legal Solicitors* [2014] EWCA Civ 183, [2014] Lloyd's Rep FC 282, [2014] PNLR 20 (cited in *Dreamvar* at [107]):

“33. The second main stage of the section 61 analysis, usually described as discretionary, consists of deciding whether the trustee ought fairly to be excused for the breach of trust. This requires that regard be had to the effect of the grant of relief not only upon the trustee, but also upon the beneficiaries: see *Marsden v Regan* [1954] 1 WLR 423, per Evershed MR at 434; and *Bartlett v Barclays Trust Co. (No.1)* [1980] Ch 515, per Brightman J. at 538A. Furthermore, section 61 makes it clear that even if the trustee ought fairly to be excused, the court still retains the discretionary power to grant relief from liability, in whole or in part, or to refuse it. In the context of relief sought by solicitor trustees from liability for breach of trust in connection with mortgage fraud, much may depend at this discretionary stage upon the consequences for the beneficiary. An institutional lender may well be insured (or effectively self-insured) for the consequences of third party fraud. But an innocent purchaser may have contributed his life's savings to the purchase and have no recourse at all other than against his insured solicitor, where for example the fraudster is a pure interloper, rather than a dishonest solicitor in respect of whose fraud the losers may have recourse against the Solicitors' Compensation Fund.”

Discussion and conclusions

Claim against CPS

53. As noted above, CPS's defence is that the Forms TA13 were not signed or provided with its authority. The defendants' counsel accepted that whether there was actual authority was a triable issue i.e. one as to which CPS have a real prospect of success.
54. The difficulty faced by the defendants is that their only pleaded case is based on actual authority. They have not pleaded a case based on Ms Smith having apparent or ostensible authority to provide the undertakings, nor that she was held out by CPS as its representative. In those circumstances, the defendants cannot in my judgment, show that CPS has no real prospect of successfully defending the claim.

Claim against Wilkes

Breach of trust

55. Wilkes' counsel rightly accepted it was subject to the trust obligations identified in §87 of *Dreamvar*. Thus, it would be liable for breach of trust by releasing the completion sum, unless this was done on completion of a genuine sale and purchase of the property. Wilkes' defence as to this is based on its non-admission that the transaction was not genuine. It does not put forward any positive case that it was genuine. I am

satisfied that Wilkes has no real prospect of success on that issue. There is no real prospect of there being any other explanation as to why the transaction was not completed.

Section 61 defence

56. As to Wilkes' defence relying on section 61, again, as noted, the defendants have not pleaded in a Reply to this defence, nor is a basis for rejecting the section 61 defence put forward in their evidence (or their application notice). Their pleaded case and filed evidence do not therefore in my judgment show that the defence has no real prospect of success.
57. The only grounds for rejecting the defence are contained in the defendants' skeleton argument. This is not in my judgment sufficient where summary judgment is sought. The (Part 20) claimant must plead its case and show by its evidence that there is no real defence to it. In case, however, that I am wrong about this, I consider the arguments put forward the defendants in their skeleton argument.

Honesty

58. The defendants do not suggest that Wilkes did not act honestly.

Reasonableness

59. Reasonableness is a fact sensitive, multi-factorial issue, which is generally (though not always) unsuitable for summary judgment.
60. In his skeleton argument, the defendants' counsel puts forward two factors as showing a failure to act reasonably, sufficient to justify refusing relief under section 61:
- (1) Wilkes were professionals whose services were paid for by the defendants;
 - (2) Wilkes failed to make careful enquiries to ensure that the alleged sellers were in fact the true owners of the properties.
61. As to the first, this cannot in my judgment be determinative as to whether a trustee has acted reasonably. I accept of course that a stricter approach is taken to professional trustees than gratuitous ones: see *Dreamvar* at [107]. However, the mere fact that Wilkes are professionals is not enough of itself to prevent them from relying on section 61.
62. As to whether Wilkes should have made enquiries of CPS, its evidence is contained in the witness statement of Andrew Watts, a partner in the firm. He sets out that he verified the identity of its own client, which for these purposes was Mr Shareef, as the director and shareholder of the defendants.

63. Rule 8.1 of the SRA Code of Conduct for Solicitors provides for a solicitor to verify the identity of their own client :

“When you are providing services to the public or a section of the public

8.1: Client identification

8.1 You identify who you are acting for in relation to any matter”

64. In addition, solicitors are required to comply with various anti-money laundering procedures, such as those contained in the Money Laundering Regulations 2017. These also require the identity of the client to be verified.

65. Mr Watts’ evidence is that he did not verify the identity of CPS’s client, because he believed that it was CPS’s obligation to do, both under the SRA Code and to comply with anti-money laundering legislation. Similarly, he did not ask CPS to confirm that it had fulfilled those obligations – it did not occur to him that it had not done so.

66. Finally, Mr Watts’ evidence is that he cannot recall ever asking for such confirmation from the other side of a conveyancing transaction.

67. His position is supported by the fact that references to the “Seller” in the Code are to the actual or real owner. The effect of para 4(ii) of the Code is that the Seller’s solicitors receive the completion monies to hold them on trust for completion with the real owner of the property. There is therefore in my judgment a real prospect of the court concluding that Wilkes acted reasonably by paying the completion monies to CPS on the footing that either:

- (1) completion would take place with the real owner of the properties; or
- (2) the monies would be returned to Wilkes.

68. The defendants have not filed any evidence as to these matters, nor have they submitted that there are any provisions in the SRA’s codes or in anti-money laundering legislation requiring the enquiries which they say Wilkes acted unreasonably in not making. In my judgment, Wilkes have a real prospect of showing that they acted reasonably in not making any further enquiries.

69. Thus, I am not satisfied that Wilkes have no real prospect of success in showing that they acted reasonably.

Whether Wilkes ought reasonably to be excused from liability

70. As to this, Wilkes relies upon the financial difficulties arising from its insurance position (see para 34 above) and the fact that there is a real risk that it will be without recourse to CPS (see paras 35 and 36 above).
71. There is no evidence of the impact on the defendants if relief is granted. Their counsel submitted that in circumstances where the purchases have fallen through, the immediate financial impact on the defendants is obvious. However, the defendants are limited companies, and are only liable to the extent of their assets. The person who arguably will suffer hardship is Mr Shareef, as guarantor of the defendants' liabilities to the lender, but he is not a claimant in the defendants' Part 20 claim. I cannot therefore conclude that Wilkes has no real prospect of showing that it ought reasonably to be excused.

Contribution claim

72. I turn now to consider whether the defendants have a claim against CPS and Wilkes under the Contribution Act. Applying the test set out in *URS Corporation*, the questions to be asked are:
- (1) are the defendants liable, or could they be found liable, to the lender?
 - (2) is CPS/Wilkes liable, or could they be found liable, to the lender?
 - (3) are the respective liabilities of CPS/Wilkes in respect of the same damage suffered by the lender?
73. Applying this test, first, the defendants have of course been found liable to the lender.

Undertakings to the lender/TLT

74. CPS's liability to the lender depends on it having given the undertakings in the letter dated 2 December 2022, apparently signed on its behalf. As noted, CPS alleges that the signature was a forgery, so that it did not give the undertakings. For the reasons discussed above, this plainly gives rise to a triable issue and prevents the defendants from showing that CPS has no real prospect of defending this part of their claim.
75. Wilkes admits it provided the undertakings alleged.

Breach of undertakings

76. Again, as noted, this part of the claim is completely unparticularised, both as to the breaches alleged and the loss or damage alleged to have been caused by them.
77. On this basis alone, the defendants cannot satisfy the court that CPS/Wilkes have no real prospect of defending this part of the claim. Nonetheless, I consider the position if they are liable for breaches of the undertakings identified in the Part 20 claim.

Liability in respect of the same damage

78. The question arising is whether the defendants and CPS/Wilkes are liable in respect of the same damage as the damage for which the defendants are liable. Applying *Howkins & Harrison*, the defendants' liability to the lender is the contractual liability to repay their debt.
79. The defendants argued that the lender's claim against CPS/Wilkes is for breach of trust and breach of CPS's undertaking to return all monies due if requested to do so unless completion had occurred. This is not, however, how their case is pleaded in paragraph 35 of their Part 20 particulars of claim, which is that:
- (1) CPS undertook that they were holding original DS1s;
 - (2) Wilkes undertook that it would "transfer" completed and dated Transfers and "security documents".
- (set out in full in paras 23 and 37 above)
80. Paragraphs 40 and 42 of the Pt 20 particulars of claim allege that CPS is in breach of its undertakings to TLT and the lender, and that Wilkes is in breach of its undertakings to TLT (though not to the lender). The only way to construe these allegations is as referring to the undertakings pleaded in paragraph 35 of the Part 20 particulars of claim.
81. Thus, the defendants do not even allege that Wilkes was in breach of its undertakings to the lender. They also, as noted, do not plead any case as to the damage resulting from the breaches. However, whatever damage the lender suffered by the breach of these undertakings, it is not the "same damage" as the defendants' contractual liability to the lender in debt. The defendants cannot, in my judgment, establish that CPS/Wilkes have no real prospect of showing that any damage for which they are liable to the lender is not the same damage as that for which the defendants are liable to the lender.
82. In addition, even if a claim that Wilkes is liable to the lender for breach of trust were fully pleaded and particularised, the matters which Wilkes raises in support of its section 61 defence to the defendants' claim, could also be raised in defence to its liability to the lender, particularly where, as here, the lender is an institutional lender which may be insured (or effectively self-insured) – see [33] in *Santander UK* (cited at para 52 above).

Conclusion

83. For the reasons set out above therefore, and notwithstanding that the defendants are the innocent parties in these regrettable circumstances, I dismiss their applications for summary judgment.

Postscript

84. Following the circulation of this judgment in draft, the Court was informed (on 8 January 2025) that, pursuant to s.1000 of the Companies Act 2006, CPS was struck off the Companies Register on 25 December 2024, and dissolved on 31 December 2024. The effect of the dissolution is that CPS has ceased to exist, and its assets have vested in the Crown *bona vacantia*. The current position therefore (and subject to any application to restore CPS to the register) is that no judgment can be entered against it by the defendants or Wilkes.