

**UPPER TRIBUNAL (LANDS CHAMBER)**



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UTLC Case Number: LREG/103/2019**

**TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007**

*LAND REGISTRATION – Alteration and rectification – whether purchaser entitled to rely on transfer executed by director during receivership – whether receivers discharged before execution of transfer – section 26, Land Registration Act 2002 - appeal dismissed*

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST TIER  
TRIBUNAL (PROPERTY CHAMBER)**

**BETWEEN:**

**(1) DR AKASH GHAI  
(2) DR HARJIT KAUR GHAI  
(3) DR DEEPINDER SINGH SOMAL**

**Appellants**

**and**

**MAYMASK (228) LIMITED**

**Respondent**

**Re: Bolbec Hall,  
Westgate Road,  
Newcastle-upon-Tyne**

**Martin Rodger QC, Deputy Chamber President  
15-16 September 2020  
North Shields Tribunal and Court Hearing Centre**

*Andrew Shaw, instructed by Square One Law, for the appellants  
Stephanie Tozer QC, instructed by DWF Law LLP, for the respondent*

The following cases are referred to in this decision:

*Criterion Properties plc v Stratford UK Properties LLC* [2004] 1 WLR 1846

*Ghai v Chahal* [2020] EWHC 2319 (Ch)

*GHLM Trading Ltd v Maroo* [2012] 2 BCLC 369

*Gomba Holdings v Homan* [1986] 1 WLR 1301

*Jayasinghe v Liyange* [2010] 1 WLR 2106

*Moss Steamship Co Ltd v Whinney* [1912] AC 255

*Walker v Burton* [2014] 1 P & CR 9

## **Introduction**

1. This is an appeal against a decision of the First-tier Tribunal, Property Chamber, (“the FTT”) on 17 May 2019 by which it dismissed an objection by the appellants to the registration of the respondent (“Maymask”) as proprietor of a property known as Bolbec Hall, Westgate Road, Newcastle upon Tyne (“the Property”). Maymask had applied to be registered following the completion on 8 June 2018 of a contract for the sale and purchase of the Property which it had entered into with Bolbec Hall Limited (“BHL”).
2. The appellants are shareholders in BHL, the intended transferor of the Property. Until very recently, the sole director and shareholder of the Company was Mr Ranjit Chahal but in proceedings between Mr Chahal and the appellants the High Court has now confirmed that the appellants are entitled to be issued shares in the Company and to be appointed as directors (the decision of HHJ Davis-White handed down on 27 August 2020 is *Ghai v Chahal* [2020] EWHC 2319 (Ch)).
3. The FTT’s decision was made without a hearing. Permission to appeal was granted by this Tribunal which directed that the appeal should take the form of a review of the FTT’s decision with a view to a re-hearing. After hearing submissions on the review I reserved my decision and heard the parties’ evidence and submissions on the rehearing. Both parties asked that I should, in any event, determine as many issues as I could, in view of the appellants’ stated intention to join Maymask in a claim against Mr Chahal for breach of his director’s duties, if it had proper grounds to do so.
4. At the hearing of the appeal the appellants were represented by Mr Andrew Shaw, and Maymask was represented by Ms Stephanie Tozer QC. I am grateful to them both for their helpful submissions.

## **The facts in outline**

5. Bolbec Hall is a prominent Grade II listed building in the centre of Newcastle comprising more than 16,000 sq ft on six floors. It adjoins the Newcastle Literary and Philosophical Society Library and was constructed by the Society in 1909 for its own use. By 2010 the Property had become vacant and was offered for sale. In 2015 BHL purchased it for £850,000 (plus VAT) with the benefit of a loan from Auction Finance Ltd (“the Lender”). The loan was secured by a first legal charge over the Property.
6. BHL was unable to keep up its loan repayments and in November 2017 the Lender appointed Mr Benjamin Tobin and Mr Paul Joseph as fixed charge receivers over the Property. There is an issue between the parties whether, following the appointment of the receivers, Mr Chahal had authority to deal with the Property in any way.
7. The Receivers marketed the Property for sale through a Newcastle agent, seeking offers over £1.25 million (plus VAT). An encouraging level of interest was generated in the spring of 2018, including one bid at the asking price subject to the completion of a survey. Mr Chahal appears nevertheless to have been keen to avoid a sale and in March

2018 he persuaded the receivers to cease marketing the Property on condition that he make a payment to reduce the borrowing and arrears.

8. To enable BHL to make that payment and to prevent a sale Mr Chahal sought an investment from the appellants. They agreed to advance funds on terms set out in a shareholders' agreement between themselves, Mr Chahal and BHL. One of the terms of that agreement was that the appellants would collectively become 50% shareholders of BHL. The shareholders' agreement also provided that the sale of the Property by BHL would require the consent of the appellants, whose investment would be prioritised over Mr Chahal's in the distribution of any eventual sale proceeds.
9. The relationship between the appellants and Mr Chahal quickly soured. At the beginning of May 2018 Mr Chahal had informed the appellants that he now wanted to sell the property as soon as possible (I infer before the next interest repayment fell due in June). The appellants had agreed to allow him four weeks to do so, but whether the sale was to be by the receivers to a purchaser introduced by Mr Chahal or by BHL itself was not a detail which appears to have been clear at that stage. Later in May, in response to the appellants' insistence that they now be appointed directors of BHL in accordance with the shareholders' agreement, Mr Chahal purported to rescind the agreement on the grounds of fraudulent misrepresentation. The High Court proceedings to which I have already referred has confirmed that Mr Chahal was not entitled to rescind the shareholders' agreement and that the appellants retain their rights under it.
10. While he was attempting to side-line the appellants Mr Chahal was in negotiation with Mr John Wade for the sale of the Property. Mr Wade had first viewed the Property in February 2017, before the appointment of the receivers, and at that time he told the agent who introduced it to him that he would be interested in purchasing at a price below £1million. Nothing came of that interest, but when the Property was marketed by the receivers early in 2018 Mr Wade responded again with two bids; when the first of £1 million was refused he followed it with another of £1.2 million. In each case the offer was expressed to be "subject to survey".
11. The Property was withdrawn from the market without any bid having been accepted by the receivers, but on 11 May 2018 Mr Wade received an approach from Mr Chahal, as he put it "out of the blue". A number of options were mentioned in their conversation. Initially at least, the only one of interest to Mr Wade was an outright sale of the Property but over the following weeks Mr Chahal introduced him to a Mr Malhotra, whom Mr Wade agreed should become involved. Maymask was subsequently incorporated as a joint venture between Mr Wade and Mr Malhotra.
12. Mr Chahal wanted to achieve a quick sale, preferably by 24 May, and on that understanding Mr Wade offered to buy the Property for £1 million discounted by the estimated cost of essential works to the roof, lift, fire escape and fire precautions, which were to be identified by a mutually agreed surveyor. Malcolm Hollis, Surveyors, were agreed on and a survey was quickly arranged by Mr Chahal. They estimated that the refurbishment of the whole building would cost in excess of £1.6 million, but that the items agreed by the parties to be essential repairs represented about £400,000 of that

total. On that basis Mr Chahal and Mr Wade agreed a sale price of £600,000, which was subsequently increased to £650,000 after completion was delayed while Mr Wade went on holiday.

13. The sale of the Property to Maymask was completed on 8 June 2018 for £650,000 (plus VAT). The sale was not by the receivers, whose appointment was terminated on the same day. After the discharge of the loan Mr Chahal appears to have appropriated most of the net sale proceeds, including the sum of £150,000 paid in respect of VAT.
14. The appellants were informed of the sale by Mr Tobin, one of the receivers, on the day it completed, although they only became aware of the purchase price a few weeks later. In a short email sent late in the afternoon of 8 June Mr Tobin told Dr Somal that “the debt has redeemed this afternoon and accordingly my receivership is terminated so that I have no further involvement in the property.”
15. It is in dispute whether the receivers’ appointment came to an end by their resignation before the contract of sale was entered into and completed, as Maymask and the receivers maintain, or as a consequence of the redemption of the charge on completion of the sale during the afternoon of 8 June, as the appellants submit the contemporaneous documents suggest.
16. Mr Tobin’s email of 8 June was understood by the appellants’ advisers to imply that the receivership had terminated as a result of the redemption of the charge, and necessarily therefore after completion of the sale and the payment of the purchase price. That suggestion became the basis of the appellant’s case that the receivers had remained in post when the contract was purportedly completed by BHL itself without the receivers’ participation. As a result, the appellants contend, the transaction as a whole was void and of no effect and the transfer ought not to be registered.

### **The proceedings**

17. On 15 June the appellants’ solicitors wrote to the Land Registry under section 73, Land Registration Act 2002 lodging an objection to the registration of Maymask as proprietor of the Property. The basis of their original objection was that Mr Chahal did not have authority to transfer the Property out of the Company because in doing so he was acting inconsistently with the shareholders’ agreement. The Land Registry did not consider that was a viable ground of objection and said so. On 29 June the appellants’ solicitors wrote again, this time casting doubt on BHL’s ability to dispose of the Property because of the involvement of the receivers. On the understanding that the sale had occurred before the termination of the receivership, they asserted that Mr Chahal must have acted without authority in effecting the sale. As Maymask was aware of the appointment of the receivers the sale to it was said consequently to be void. It was also suggested for the first time that the Property may have been sold at an undervalue, in breach of Mr Chahal’s fiduciary duty to BHL, and that if Maymask had been aware of that fact it would be another reason why the transfer to it would be void.

18. On 12 July the Land Registry notified the appellant's solicitors that it did not consider it could dispose of their objection as being groundless. On 3 October 2020 it referred the objection to the FTT in accordance with section 73(7) of the 2002 Act.
19. In its summary of the case being referred to the FTT the Land Registry recorded the appellants' ground of objection as being that Mr Chahal did not have authority to sell the Property as a result of the appointment of the receivers. The matter referred for determination was made clear by the Land Registry in the following additional observations:

“The objectors have put forward a number of grounds in support of their objection however all have been found to be groundless other than their argument that the Director did not have authority to act on behalf of the Company in selling the Property in view of the appointment of Law of Property Act receivers. It is on that basis only that the application is being referred.”
20. The Land Registry stated that Maymask's answer to that objection was that the receivers had clearly consented to the sale of the Property, as evidenced by the facts that they had supplied a discharge in respect of their security.
21. Section 108 of the 2002 Act gives the FTT the function of “determining matters referred to it under section 73(7)”. Necessarily, those will be matters which the Land Registry has not already dismissed as groundless. In *Jayasinghe v Liyange* [2010] 1 WLR 2106, Briggs J discussed the functions which were then discharged by the Adjudicator in the context of the statutory scheme and suggested that the matter referred by the Land Registry for determination should be identified by considering the nature of the application and the basis of the objection which has led to the reference. Although Mr Shaw pointed to a discussion in *Ruoff & Roper's Law and Practice of Conveyancing*, at 48.016 in support of a submission that the matters in issue before the FTT should not be treated as confined by the Land Registry's case summary, the FTT clearly has no power to determine any matter which has not been referred to it by the Land Registry. The FTT is not a tribunal of appeal against decisions by the Land Registry that a particular objection to registration is groundless; it is concerned only with objections which have been referred to it because the Land Registry is unable to dispose of them as groundless.
22. The contentions which Land Registry rejected as groundless included the suggestion made on 29 June 2018 by the appellants' solicitors that the transfer was void because, to the respondent's knowledge, the Property was sold at an undervalue. The Land Registry dismissed that allegation on the basis that the appellants had not produced any information or evidence to suggest Maymask was aware that the Property was being sold at anything less than its market value.
23. The FTT dismissed the appellants' last remaining objection without finding it necessary to conduct a hearing or investigate the issue of fact which the Land Registry had felt unable to resolve summarily. The current appellants were the respondents to the application and the FTT dismissed their objection on the following basis:

“A disposition of the legal interest in property is effected by the registration of a duly completed and executed transfer in form TR1.

At the time the subject transfer was presented to HM Land Registry for registration the appointment of the receivers had been discharged. The sole director had authority to execute the form TR1. Insofar as may be necessary he did so with the consent and authority of the receivers. In any event, if there was at any relevant stage a want of authority due to the appointment of receivers, that is a matter for the receivers and not the respondents as shareholders.

The respondents as shareholders have no proprietary interest in the property. Any dispute there may be between the respondent as shareholders and Mr Chahal, whether as shareholder or as the sole director, does not give the respondents a proprietary interest in the property, such that they can prevent registration of the transfer.”

24. Permission to appeal was sought on a large number of grounds, some of which are no longer pursued, while others are now conceded by Maymask but on the basis that they do not undermine the decision. In particular, on the review of the FTT’s decision on the basis of the material before it, Ms Tozer did not seek to support the FTT’s finding that Mr Chahal had the consent and authority of the receivers when he executed the transfer form TR1. It was not Maymask’s case that Mr Chahal had derived his authority from the receivers, and there was no material before the FTT supporting that finding. Nor did Ms Tozer support the FTT’s apparent suggestion that, as shareholders, the appellants had no standing to seek to prevent the registration of the transfer (subject to inapplicable exceptions, section 73(1), 2002 Act provides that “anyone may object to an application to the registrar”; see also *Walker v Burton* [2014] 1 P&CR 9 at [31]).
25. The FTT’s summary determination of issues of fact which were disputed before it and its apparent exclusion of the appellants’ entitlement to object to registration both obscured the simplicity of the propositions in the first two sentences of its decision. The debate which ensued on the application for permission to appeal also lost sight of those propositions, but they emerged in the forefront of Ms Tozer’s argument on the appeal.
26. At the hearing of the appeal the parties first addressed issues arising on the review of the FTT’s decision. At the conclusion of their submissions I reserved my decision on the review and indicated that I would hear evidence on the re-hearing in case I were to conclude that the FTT had not been entitled to make the decision it did for the reasons it gave. While that procedure extended the hearing neither party suggested it was inappropriate and both were keen to resolve as many issues as possible in these proceedings rather than at a later stage.

## **The appeal**

27. The broad issue on the appeal is whether the FTT was right to conclude, without hearing evidence or resolving disputed questions of fact, that there was no substance in the appellants’ objection to registration on the grounds that Mr Chahal had lacked authority

to act on behalf of BHL because, at the relevant time, his actual authority was suspended by reason of the receivership.

### **Mr Chahal's authority**

28. On behalf of the appellants Mr Shaw submitted that, on ordinary principles of agency law, a director does not have authority to bind the company in relation to an agreement, the entry into which is a breach of that director's duties to the company. Where the other party to the agreement is on notice that the director is acting in breach of duty, it cannot rely on the director's apparent authority (*Criterion Properties plc v Stratford UK Properties LLC*, per Lord Scott at [31]). Hence, an agreement entered into by a director in breach of duty where the other party had notice of the breach will be void (*GHLM Trading Ltd v Maroo* [2012] 2 BCLC 369, per Newey J at [170] to [171]). Ms Tozer QC did not dispute these propositions of law, so far as they went.
29. Mr Shaw next submitted that where receivers are appointed over the assets of a company, the appointment divests the company's board of any power it had to deal with the company's assets (*Moss Steamship Co Ltd v Whinney* [1912] AC 255, 262; *Gomba Holdings v Homan* [1986] 1 WLR 1301, 1307). A director attempting to deal with such assets would be acting without authority and thus would be in breach of the fiduciary duty owed under section 171, Companies Act 2006. There was a dispute of fact over the point in time at which the receivership had come to an end in this case which could not be resolved by the summary procedure adopted by the FTT but only by hearing the evidence of those involved.
30. Mr Shaw next submitted that because Maymask was aware at the relevant time that receivers had been appointed over the Property (a fact admitted in its statement of case) it was on notice that Mr Chahal had no authority to deal with the Property unless authorised to do so by the receivers. It was clear from the contemporaneous documents that the receivers had not authorised Mr Chahal to do so.
31. Ms Tozer QC accepted for the purpose of the review only that it should be assumed that the receivership had not terminated prior to completion of the transaction. That was an issue of fact which could not properly be resolved on the basis of the material before the FTT.
32. Ms Tozer QC did not accept that the power of a company whose assets were subject to an LPA receivership was limited to the full extent described by the House of Lords in *Moss Steamship*. That case had concerned the powers of a company whose property was subject to a court appointed receivership and, Ms Tozer suggested, statements of the highest authority contained in it had subsequently been misapplied to LPA receiverships. If, during the receivership, Mr Chahal had effected a sale which resulted in the repayment of BHL's debt and redemption of the charge that could only be beneficial to the company and therefore involved no breach of the director's duties so the sale would be valid.
33. In any event, Ms Tozer QC submitted, this issue was irrelevant to the rights of the parties in this case. It was now common ground that the receivership did not negate the power



of BHL to execute an effective transfer of the Property. Section 26(1), 2002 Act prevents the title of a donee from being questioned by providing that, in the absence of an entry in the register, a person's right to exercise owner's powers in relation to a registered estate or charge is to be taken to be free from any limitation affecting the validity of a disposition. Ms Tozer suggested that the determinative question was whether *at the relevant time* the execution of the transfer was BHL's act, or whether, despite being done by the company's sole director who would ordinarily have authority to execute documents on behalf of the company, Mr Chahal's act in signing the transfer was not BHL's act because of the appointment of the receivers. Ms Tozer submitted that answering that question first required identification of what was the relevant time; in other words, at what point in time was it necessary that Mr Chahal should have had authority to act on behalf of BHL.

34. Ms Tozer QC submitted that the relevant time for consideration of the authority of the director was not the date on which the transfer was executed, but the date when the application to register was made. Section 27, 2002 Act provides that a disposition of a legal estate occurs when the disposition is "completed by registration". As the FTT explained at the start of its decision, the disposition of a legal interest is effected by registration of the transfer. In *Scott v Southern Pacific Mortgages Ltd* [2014] UKSC 52, at [40], Lord Collins had confirmed the correctness of that statement of principle:

"The effect of sections 27 and 29 of the 2002 Act is that, although a registrable disposition takes place when it is executed, neither a conveyance nor a charge takes effect at law until registration, and the consequence is that a purchaser and a mortgagee acquire equitable interests on completion: Megarry and Wade, *The Law of Real Property*, 8<sup>th</sup> ed, 2012, para 7-053; *Mortgage Corpn Ltd v Nationwide Credit Corpn Ltd* [1994] Ch 49, 54, per Dillon LJ (a case on the 1925 Act)."

35. The critical date for Mr Chahal to have had authority to act on behalf of BHL, Ms Tozer submitted, was therefore the date on which the transfer was submitted for registration. It was only from that date that the disposition of the legal estate would take place. It was not disputed that the receivership came to an end on at some point on 8 June 2018, either by the resignation of the receivers or by the redemption of the charge. The registration of the transfer would (if permitted) take effect from the date of the application for registration, which was 11 June 2018. Nothing which happened before that date made any difference to the ownership of the legal estate in the Property and, Ms Tozer suggested, it could be ignored for the purpose of the objection to registration. By the date on which the disposition was deemed to be completed at law there was no obstacle to the transfer being effective to convey the legal estate. The receivership had (on any view) ended.
36. Mr Shaw's answer to Maymask's primary case was that, on the assumed fact that the receivership had terminated only on redemption of the charge, Mr Chahal had lacked authority to enter into the contract which preceded the completion of the transfer and the payment of the purchase price on 8 June, and had lacked authority to execute the transfer on behalf of BHL. It followed, Mr Shaw argued, that there had been no disposition to register, and there was nothing for section 27 to "bite on".

37. I do not accept Ms Tozer's analysis, but nor do I agree with Mr Shaw's explanation of why it is wrong.
38. Section 27(1) provides that "If a disposition of a registered estate or registered charge is required to be completed by registration, it does not operate at law until the relevant registration requirements are met." A transfer is a disposition required to be completed by registration (section 27(2)(a), 2002 Act). The effect of section 27(1) is therefore that a transfer will not operate at law until it is registered.
39. But the reference in section 27(1) to a disposition which is required to be completed by registration does not prevent a disposition from being made on execution of the transfer. As the passage from *Scott v Southern Pacific Mortgages* on which Ms Tozer relied makes clear, "a registrable disposition takes place when it is executed", and it is at that point that the disposition is made and the rights of the parties are altered. Although the purchaser does not acquire legal title until registration of the disposition takes place, the disposition itself is made when the transfer is completed in the manner agreed between the parties, which in this case was by execution and delivery of the original and counterpart of a transfer in the form annexed to the contract. Ms Tozer's submission that the authority of the director to act on behalf of the company need be examined only at the point at which an application was made for registration of the transfer is inconsistent with that basic proposition.
40. In my judgment the answer to Mr Shaw's contention that it is necessary to go behind the transfer and consider whether Mr Chahal had authority to bind the company is found in sections 24 and 26, 2002 Act. The parties agreed that the appointment of the receivers did not take away the power of the borrower to transfer the Property; Ms Tozer did not found her case on that agreement (although it was relied on in Maymask's statement of case as a complete answer to the appeal).
41. Part 3 of the 2002 Act is concerned with dispositions of registered land and begins with a group of sections, 23 to 26, under the heading "Powers of disposition". Section 24 is concerned with the right to exercise "owner's powers", a concept explained in section 23. With irrelevant exceptions, owners' powers in relation to a registered estate consist of power to make a disposition of any kind permitted by the general law, and power to charge the estate with the payment of money. Section 24 then provides:
- "A person is entitled to exercise owner's powers in relation to a registered estate or charge if he is—
- (a) the registered proprietor, or
- (b) entitled to be registered as the proprietor."
42. At all material times BHL has been the registered proprietor of the Property and has therefore been entitled to exercise owner's powers. Mr Shaw's submission concerned the manner in which BHL was able to exercise those powers while the receivers' appointment continued: in short, during the receivership the company was unable to make a disposition by an instrument executed by its sole director.

43. But the foundational principle of the 2002 Act is that the state of the register is the paramount consideration. This principle is reflected in section 26 which provides protection for disponees, as follows:

“26 Protection of disponees

(1) Subject to subsection (2), a person's right to exercise owner's powers in relation to a registered estate or charge is to be taken to be free from any limitation affecting the validity of a disposition.

(2) Subsection (1) does not apply to a limitation—

(a) reflected by an entry in the register, or

(b) imposed by, or under, this Act.

(3) This section has effect only for the purpose of preventing the title of a donee being questioned (and so does not affect the lawfulness of a disposition).”

44. Where a registered proprietor's right to make a disposition is called into question, the register provides the solution. As the authors of Megarry and Wade explain, at 6-051, referring to section 26:

“The effect of these provisions is that a donee of registered land is entitled to assume that the donor has the power to make the disposition to him, unless there is something in the register that places a limit on the donor's powers. In this way the donee's title cannot be questioned if it transpires that he or she did not have power to make the particular disposition.”

45. The appellants object to the transfer to the respondent being registered on the basis that the act of Mr Chahal in executing the transfer in the presence of a witness was not the act of the company itself because Mr Chahal's authority was in abeyance during the receivership. There is no doubt that, but for the receivership, Mr Chahal's signature of the transfer, witnessed by Mr Brar, would have satisfied the requirements of section 44(2), Companies Act 2006. Mr Shaw relied on the absence of attestation of Mr Chahal's signature of the contract of sale by a witness, but it is not the contract which matters, only the transfer. He also made submissions about the scope of section 44(5), Companies Act 2006, which provides in favour of a purchaser in good faith for valuable consideration that a document is deemed to have been duly executed by a company if it purports to be signed in accordance with sub-section (2). But it is not necessary to consider those submissions. The appellants' case is simply that the receivership took away Mr Chahal's authority and prevented his act in executing the transfer from being the act of the company. In other words, there was a limitation of which Maymask was aware which affected the validity of the disposition. In my judgment that objection is trumped by section 26, despite knowledge on the part of Maymask that receivers had been appointed.

46. The purpose of section 26 is to make it unnecessary for a purchaser to be concerned about potential limitations on the power of the registered proprietor to make a disposition

of its property. If a limitation is reflected by an entry on the register a purchaser will be concerned to ensure that it is discharged; in the absence of an entry the purchaser is protected. In this case there was no entry in the register referring to the appointment of the receivers or to any limitation on the power of the company to make dispositions of the Property. It follows, in my judgment, that section 26 provides a complete answer to the appeal. Maymask was entitled to proceed on the assumption, whatever the true facts, that BHL's right to exercise owner's powers was free of any limitation.

47. This was not the reason given by the FTT for its decision. The FTT considered that the discharge of the receivers by the time the application for registration was presented was the critical feature. Whether it regarded its subsequent finding that Mr Chahal had authority to execute the form TR1 as a necessary ingredient of its abbreviated reasoning is unclear. The parties now agree that it was not open to the FTT on the material before it to reach any factual conclusion about the director's authority on 8 June when he signed the transfer. But an absence of transparent reasoning has not been suggested by Mr Shaw to be a ground of appeal in itself. I therefore dismiss the appeal.

### **The issues of fact which would arise if I am wrong**

48. The conclusion I have already reached is enough to dispose of the appeal. I am not minded to determine issues of law which do not now arise. But having been invited by the parties to determine as many issues I can, and having heard the relevant evidence, I am prepared to determine the disputed questions of fact which would, or might, arise if I am wrong on the issue of law on which the appeal has failed.
49. The first of those issues concerns the sequence of events in relation to the termination of the receivership on 8 June 2018.
50. The high point of the appellants' case is Mr Tobin's email at 16.45 on 8 June informing Dr Somal that "the debt has redeemed this afternoon and accordingly my receivership is terminated". As Mr Shaw emphasised, that is a contemporaneous document, and suggests on a fair reading that the receiver's appointment terminated after BHL's debt had been repaid. On the other hand, the email is concise and perhaps intended to be obscure. The version of events suggested by that fair reading is unlikely to have been intended by Mr Tobin, and it is inconsistent with the account given by Mr Tobin when he was first asked to clarify what had occurred on 27 June 2018 when he stated unequivocally that his appointment was terminated before the sale.
51. The appellants also rely on the fact that both Mr Chahal's former solicitors, Clarke Mairs LLP, and Maymask's former solicitors, Sintons LLP, argued in correspondence in July 2018 that the receivers had consented to the purported sale. Their consent would have been unnecessary and irrelevant if the receivers' appointment had terminated before the sale occurred. Mr Shaw submitted that Maymask's evidence on the timing of the agreement to sell the Property and the termination of the receivers' appointment was vague and unsatisfactory, but having heard the evidence of those most closely involved I am satisfied that a clear and reasonably consistent picture emerges.

52. Mr Leigh, who acted for the receivers and for the Lender, and Mr Brar, who acted for BHL, confirmed the sequence of events in the run up to the transaction and on 8 June when the documents were executed.
53. Mr Leigh (who gave his evidence using a remote digital platform) explained that his firm, Priority Law, acts almost exclusively for the Together Money group of which the Lender is part. Its offices are in the same building as its client, with whom it has a close working relationship involving a large number of similar instructions. He has often worked with Mr Tobin. Mr Leigh explained that he frequently receives instructions orally and it is not his practice to make extensive file notes. He had what he referred to as standing instructions from his client and from Mr Tobin to take the steps required to complete transactions on their behalf, including the redemption of charges on the sale of a property.
54. Mr Leigh told me, and I accept, that he was informed in May 2018, probably by Mr Tobin, that a deal had been reached for a sale of the Property by BHL, rather than by the receivers. He was familiar with this approach and that it required the receiver to step aside before completion of the sale. Although he had no specific recollection of having done so, he believed that in keeping with his usual practice he would have checked that the Lender was content to proceed in that way and would have received confirmation either face to face or by telephone. Mr Tobin had also referred to the need to obtain the approval of the Lender for a sale by BHL in an email on 22 May to Mr Pickett of DWF, solicitors, who was originally expected to act for the purchaser in the transaction. There is no reason to doubt that the Lender was aware of the proposal that the receivers should stand down in advance of a sale arranged by BHL.
55. On 24 May Mr Tobin sent Mr Leigh a printed form which described itself as a "Receivership Termination Deed". Mr Tobin explained that the document had originally been drafted by a solicitor and he had used it for many years when terminating receivership appointments. Its efficacy had never been questioned until this appeal in which Mr Shaw argued that the Lender's charge provided that the only way the receivership could be brought to an end was under the hand of any official or manager of the Lender or by a properly executed deed.
56. The document was undated but signed by both receivers, and came to Mr Leigh under cover of an email telling him to hold it to Mr Tobin's order "in anticipation of the termination of the receivership in order to allow the sale by the borrower as discussed". The termination was to be effective from the date Mr Leigh would add to the document at which point he was also to sign it on behalf of the Lender (Mr Tobin explained that this was as an acknowledgement by the Lender of the termination of the receivership, and not as an act of termination by the Lender).
57. Mr Leigh said in his evidence that when he received the termination document on 24 May he then understood himself to be acting on the basis of his standing instructions to complete the documents in the manner required. Mr Tobin thought it was likely there had also been a specific telephone conversation to that effect. Mr Tobin and Mr Leigh

spoke to each other several times a day on a variety of matters and I do not find it surprising that on small matters of detail their recollections may differ.

58. When Mr Leigh and Mr Brar first discussed the transaction Mr Leigh explained that the receivers would resign shortly before completion, allowing Mr Chahal to authorise the sale by BHL. Mr Brar was made aware that Mr Leigh held the necessary document signed by the receivers to enable them to step aside in anticipation of the transaction completing.
59. Mr Brar explained that Mr Chahal had attended his offices on 7 June to sign the contract and transfer document which were then held by Mr Brar ready for completion. On the same day he had a conversation with Mr Tobin, which he recorded in a file note, to confirm that he would terminate the receivership to allow the sale to proceed.
60. Shortly after 9.00 am on 8 June Mr Brar sent an email to Mr Leigh alerting him that completion was due to take place later that morning and seeking confirmation of the sum required for redemption of the charge. Mr Leigh copied his acknowledgment to Mr Tobin and obtained details of the redemption sum from a colleague. Mr Tobin confirmed by email at 9.18 am that he had no additional costs and Mr Leigh then proceeded to date the receivership termination document. He believed he had done so within minutes of Mr Tobin's response. Mr Leigh explained, and I accept, that he reads his emails immediately they arrive and on that basis I find that the termination document had been dated and completed by Mr Leigh by 9.30 on 8 June.
61. Mr Brar telephoned Mr Leigh to obtain confirmation that he had completed the required document. Having obtained it he and Maymask's solicitor, Mr Loomba of Sintons, spoke on the telephone and completed first the contract and then the TR1 transfer document. The copy of the document which I was shown carries the manuscript note, "B 1.30pm", and I find that the contract was exchanged and completed over the telephone at that time on 8 June.
62. I reject Mr Shaw's submission that, having heard the evidence, there remains some residual uncertainty about the sequence of events. Mr Shaw did not suggest to any of the witnesses that they were being untruthful in their account of what occurred, nor was he able to suggest any credible reason why they might deliberately have deviated from the approach which had been agreed on all sides.
63. I have no doubt that Mr Tobin was not keen to provide a full account of what had occurred to Dr Somal on 8 June but I do not think his "quick note" email was intended to mislead. He had already been approached by Dr Somal for information about what was going on and in an earlier email he had said that he was concerned to achieve redemption of the Lender's charge before the appellants might "intervene". Mr Tobin's primary concern was redemption and, having secured that, his instructions were complete. There was no reason for him to give an account of events to a third party.
64. The only remaining issue of fact which arose concerns Mr Wade's understanding of what was going on, and the suggestion by Mr Shaw that he had knowledge or was on notice

that Mr Chahal was acting in breach of his duties as a director of BHL in agreeing a sale at an undervalue. The proposition that the sale was void as having knowingly been entered into at an undervalue was rejected by the Land Registry on the basis of a lack of evidence. For the reasons that I have already explained, it is not an issue which I can determine and I do not intend to do so because it is not one of the matters referred to the FTT by the Land Registry. But the allegation has been put to Mr Wade in a public hearing in a court of record and it is right, I believe, that I should record that the obstacles standing in the way of its acceptance are significant.

65. The only substantial reason for the appellants to think that Mr Wade and Maymask knew that Mr Chahal was acting improperly by agreeing to sell the Property for £650,000 in June 2018 was that the bids received by the receivers in March that year had been at significantly higher figures. Against that the following matters need to be taken into account.
66. The Property had been purchased by BHL three years earlier at £850,000, but no progress had been made towards its redevelopment and receivers had been appointed. Mr Wade said he did not believe it would be straightforward to raise development finance, and BHL's experience tends to confirm that suggestion.
67. Mr Wade's evidence, supported by emails in 2017, was that he believed the building was worth about £1 million subject to survey. The purpose of the survey was to identify the cost of remedial work which would then inform a further discussion on price. Mr Wade's view of value was not markedly inconsistent with receivers' own advice to the Lender to expect offers over £1 million, nor with the spread of bids they received in March 2018, which ranged from £600,000 to £1.25 million. The highest bid was apparently from an intending owner occupier and was again subject to survey.
68. Mr Wade's own highest offer to the receivers of £1.2 million was made as part of a competitive bidding process, not for a private sale to be completed in a short timescale at the insistence of an importuning seller. It was also subject to survey. There was no guarantee that the offers received in March would be repeated if the Property was again put on the open market. It had been withdrawn against the advice of the marketing agents that to do so may prejudice bids if the Property was subsequently to be remarketed; they were also concerned that Mr Chahal's intervention might discourage interest.
69. Mr Wade had recent experience of redeveloping listed buildings in the city centre. In 2017 he had described the Property as a potential "world of pain" and it is not difficult to believe that any redevelopment project would be fraught with risks. Although Mr Tobin thought the building was in remarkably good condition, the Malcolm Hollis survey confirmed that a substantial amount of work was required. The bidder at £1.25 million was also reported to believe, from a visual inspection, that the building was in good condition but there is no way of knowing whether or by how much their bid might have been reduced on receiving the results of a survey of their own.

70. There was no apparent reason for Mr Wade to question the sale process, knowing that it would require the approval of the Lender and the receiver and that it was being promoted by BHL's sole director. He had no knowledge of the involvement of the appellants or any other investor. On the evidence there was no reason for Mr Wade to think that Mr Chahal would benefit from a sale at less than a proper price, and there is no evidence of any route by which he could do so. Mr Shaw asked whether Maymask had offered any form of inducement to Mr Chahal and, unsurprisingly, Mr Wade dismissed that suggestion out of hand. Nor is there any evidence to support the suggestion, also floated in cross examination, of a possible arrangement between Mr Chahal and Mr Malhotra, the joint venture partner he had introduced to Mr Wade.
71. For the reasons I have given I draw no conclusion from this material. The only order I make at this stage is to dismiss the appeal.
72. Maymask has indicated when commenting on the draft of this decision that it wishes to apply for its costs of the appeal and of the proceedings in the FTT (where no decision on costs as yet been made). The Tribunal's rules provide that an application for costs may be made at any time during the proceedings or within 14 days of the date on which the Tribunal gives notice of its final decision (rule 10(10), Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010). If an appropriate order cannot be agreed between the parties within 14 days they should agree a short timetable for the exchange of submissions.

Martin Rodger QC  
Deputy Chamber President  
26 October 2020